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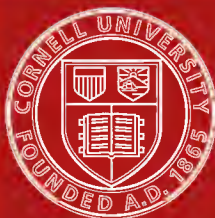
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INDUSTRIAL COMMISSION.

TRUSTS AND INDUSTRIAL
COMBINATIONS.

STATUTES AND DECISIONS OF FEDERAL, STATE,
AND TERRITORIAL LAW.

TOGETHER WITH A

DIGEST OF CORPORATION LAWS

APPLICABLE TO LARGE INDUSTRIAL COMBINATIONS.

VOLUME II
OF THE COMMISSION'S REPORTS.

WASHINGTON:
GOVERNMENT PRINTING OFFICE.
1900.

A. 156922
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INTRODUCTION.

Twenty-seven of the States and Territories have passed statutes with the intention of defining monopoly more closely in order to meet modern conditions, and to prevent the formation of monopolies by fit regulations and penalties. Fifteen States have articles in their constitutions tending to the same end, though four of these have passed no laws on the subject. Besides these restrictions, the Congress passed the antitrust act of 1890, applying to interstate commerce, and in the interstate-commerce act itself has likewise forbidden restraint of trade. The periods when the greatest activity in legislation is found are about 1890, soon after the report of the Bacon committee of Congress and the investigations of New York and Canada, and in the years 1897 and 1899, in connection with the late rapid movement toward consolidation in industries.

In this volume have been brought together the laws of Congress and of all the States and Territories on this subject that are now in force. In several of the States successive and amendatory acts have been passed in different years. The intention has been to print here all that have not been repealed.

Inasmuch as judicial interpretations of these statutes are as important as the acts themselves, it has seemed best to make a careful study of the cases decided. To that end diligent effort has been made to present a brief digest (not in the language of the court unless quoted) of all the decisions that have been made by courts of final resort in cases brought under these statutes. In some important instances the decisions of inferior courts have also been digested. It can hardly be expected that some cases have not escaped our search, but it is believed that the list is fairly complete.

So many of our States have relied upon the well-tested, time-honored principles of the common law to protect their citizens from the evils of monopoly, and so many courts have found these principles sufficient, even when special statutes were at hand, that it has seemed best to add to the list of cases

a considerable number of the most important ones decided under the common law. Legislators can thus the more readily judge the wisdom, or lack of wisdom, of seeking new remedies instead of trusting to the common law.

Legislation in the United States must be, under the Constitution, a matter of consideration by both Congress and the State legislatures in their respective fields. The line of demarcation between their powers is not readily drawn in actual practice, and in this matter of the control of corporations the puzzling entanglements of State commerce with interstate commerce have tested the acumen of the wisest judges.

To put easily within reach the means for noting part of the decisions of the United States courts on this question—a question which must be fully considered, if further legislation regarding monopolies is to be seriously undertaken—eighteen leading cases which dwell most upon the relations of the powers of Congress and the State legislatures have been added. Of course no serious and extended study can be made from brief digests; but it is hoped that enough has been given to indicate the lines of discussion followed by our Federal courts.

Two or three leading Canadian and English cases have been added as a matter of interesting comparison.

There has also been added a tabular digest of all the statutes, to render easy a comparison of those of the different States.

Part II consists of a digest of the corporation laws of the several States, in so far as these laws are applicable to large industrial combinations.

The Industrial Commission has undertaken also the compilation of the most important provisions of foreign statutes which relate to the control of corporations. It is believed that this compilation, which will take considerable time for its completion, will prove to be a valuable supplement to the present volume.

PART I.

STATUTES AND DIGESTED DECISIONS OF FEDERAL,
STATE, AND TERRITORIAL LAW RELATING TO
TRUSTS AND INDUSTRIAL COMBINATIONS.

PREPARED BY
JEREMIAH W. JENKS,
EXPERT AGENT.

LETTER OF TRANSMITTAL.

To the Industrial Commission:

I have the honor to submit herewith a compilation of the statutes of the Federal, State, and Territorial governments on the subject of trusts and industrial combinations, together with a digest of the decisions of the courts made under these statutes, and of numerous leading cases decided under the common law.

It is as yet too early to sum up the results of recent legislation on so complex a subject; but a brief study of the statutes and of the cases thus far decided may justify the following observations:

1. Practically all of these statutes were framed with the same purpose in view: To prevent the formation of combinations in trade which might become dangerous to the public, and to destroy such as already exist. In a few cases an attempt is made through special powers granted to prosecuting officers to secure information regarding these organizations, and then to strike them down, if they are seen to be monopolies in the common-law sense.

It is a striking fact that not one of these statutes aims especially at securing publicity regarding the business of the large industrial combinations through detailed reports, in order that the publicity itself may prove a remedial measure.

2. In several of the States, as will be seen from the chart, an attempt has been made to exempt from the heavy penalties of the law dealers in certain products (agricultural products and live stock) and certain classes in the community (the farmers and laborers) on the ground that such combinations are not injurious to the public.

3. The common law is sufficient to enable learned judges to protect the welfare of the people against monopolies that can be clearly proved to be against public policy. The proof needed to establish monopoly seems to vary somewhat with the locality.

4. The statutes, by defining in specific terms, referring to modern conditions, what is the act objected to, put people and prosecuting officers more on the alert regarding their rights

and duties. It is probable, too, that through the statutes the principles of the common law are fitted more rapidly into modern conditions and that they have been somewhat extended.

Possibly at times the fear of a new form of business organization may have led to the extension of legal privileges of interference with private business beyond what the public welfare demands. Some of the statutes, if read literally, would seem to forbid many perfectly innocent associations among individuals; but the courts seem invariably to have assumed that only monopoly—at least virtual monopoly—was attacked, and the decisions have been made accordingly. The courts in most instances have not entered upon the discussion of the more difficult question as to whether the monopoly in question was, against public policy; but in some few cases that has formed the basis of the decision.

5. The courts, both state and national, very generally uphold the anti-monopoly statutes. Those declared unconstitutional have been generally so declared on only minor points, which could readily be changed in subsequent statutes, but a late decision in the United States circuit court holds exceptions of special classes unconstitutional.

6. There is a tendency on the part of the courts to put combinations of labor and of capital into the same class before the law, unless special exceptions have been made.

It gives me pleasure to call attention to the very intelligent and careful work of Mr. Herbert A. Heminway, who has assisted me throughout in the preparation of this volume.

Respectfully submitted.

JEREMIAH W. JENKS.

FEBRUARY 20, 1900.

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STATUTES AND DIGESTED DECISIONS OF FEDERAL,
STATE, AND TERRITORIAL LAW ON TRUSTS
AND MONOPOLIES.

UNITED STATES.

STATUTES.

26 STATUTES AT LARGE, 209.

AN ACT to protect trade and commerce against unlawful restraints and monopolies.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

§ 1. Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several states, or with foreign nations, is hereby declared to be illegal. Every person who shall make any such contract or engage in any such combination or conspiracy, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by a fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

§ 2. Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several states, or with foreign nations, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

§ 3. Every contract, combination in form of trust or otherwise, or conspiracy, in restraint of trade or commerce in any territory of the United States or of the District of Columbia,

or in restraint of trade or commerce between any such territory and another, or between any such territory or territories and any state or states or the District of Columbia, or with foreign nations, or between the District of Columbia and any state or states or foreign nations, is hereby declared illegal. Every person who shall make any such contract or engage in any such combination or conspiracy, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

§ 4. The several circuit courts of the United States are hereby invested with jurisdiction to prevent and restrain violations of this act; and it shall be the duty of the several district attorneys of the United States, in their respective districts, under the direction of the attorney-general, to institute proceedings in equity to prevent and restrain such violations. Such proceedings may be by way of petition setting forth the case and praying that such violation shall be enjoined or otherwise prohibited. When the parties complained of shall have been duly notified of such petition the court shall proceed, as soon as may be, to the hearing and determination of the case; and pending such petition and before final decree, the court may at any time make such temporary restraining order or prohibition as shall be deemed just in the premises.

§ 5. Whenever it shall appear to the court before which any proceedings under section four of this act may be pending, that the ends of justice require that other parties should be brought before the court, the court may cause them to be summoned, whether they reside in the district in which the court is held or not; and subpoenas to that end may be served in any district by the marshal thereof.

§ 6. Any property owned under any contract or by any combination, or pursuant to any conspiracy (and being the subject thereof) mentioned in section one of this act, and being in the course of transportation from one state to another, or to a foreign country, shall be forfeited to the United States, and may be seized and condemned by like proceedings as those provided by law for the forfeiture, seizure, and condemnation of property imported into the United States contrary to law.

§ 7. Any person who shall be injured in his business or property by any person or corporation by reason of anything forbidden or declared to be unlawful by this act, may sue therefor in any circuit court of the United States in the district in which the defendant resides or is found, without respect to the amount in controversy, and shall recover three-fold the damages by him sustained, and the cost of suit, including a reasonable attorney's fee.

§ 8. That the word "person," or "persons," wherever used in this act shall be deemed to include corporations and associations existing under or authorized by the laws of either the United States, the laws of any of the territories, the laws of any state, or the laws of any foreign country.

Approved, July 2, 1890.

28 STATUTES AT LARGE, 570.

AN ACT to reduce taxation and provide revenue for the Government and for other purposes.

§ 73. That every combination, conspiracy, trust, agreement, or contract is hereby declared to be contrary to public policy, illegal, and void, when the same is made by or between two or more persons or corporations either of whom is engaged in importing any article from any foreign country into the United States, and when such combination, conspiracy, trust, agreement, or contract is intended to operate in restraint of lawful trade, or free competition in lawful trade or commerce, or to increase the market price in any part of the United States of any article or articles imported or intended to be imported into the United States, or of any manufacture into which such imported article enters or is intended to enter. Every person who is or shall hereafter be engaged in the importation of goods or any commodity from any foreign country in violation of this section of this act, or who shall combine or conspire with another to violate the same, is guilty of a misdemeanor, and, on conviction thereof in any court of the United States, such person shall be fined in a sum not less than one hundred dollars and not exceeding five thousand dollars, and shall be further punished by imprisonment, in the discretion of the court, for a term not less than three months nor exceeding twelve months.

§ 74. That the several circuit courts of the United States are hereby invested with jurisdiction to prevent and restrain

violations of section seventy-three of this act; and it shall be the duty of the several district attorneys of the United States, in their respective districts, under the direction of the attorney-general, to institute proceedings in equity to prevent and restrain such violations. Such proceedings may be by way of petitions setting forth the case and praying that such violations shall be enjoined or otherwise prohibited. When the parties complained of shall have been duly notified of such petition the court shall proceed, as soon as may be, to the hearing and determination of the case; and pending such petition and before final decree, the court may at any time make such temporary restraining order or prohibition as shall be deemed just in the premises.

§ 75. That whenever it shall appear to the court before which any proceeding under the seventy-fourth section of this act may be pending, that the ends of justice require that other parties should be brought before the court, the court may cause them to be summoned whether they reside in the district where the court is held or not; and subpoenas to that end may be served in any district by the marshal thereof.

§ 76. That any property owned under any contract or by any combination, or pursuant to any conspiracy (and being the subject thereof) mentioned in section seventy-three of this act, and being in the course of transportation from one state to another, or to or from a territory, or the District of Columbia, shall be forfeited to the United States, and may be seized and condemned by like proceedings as those provided by law for the forfeiture, seizure, and condemnation of property imported into the United States contrary to law.

§ 77. That any person who shall be injured in his business or property by any other person or corporation by reason of anything forbidden or declared to be unlawful by this act may sue therefor in any circuit court of the United States in the district in which the defendant resides or is found, without respect to the amount in controversy, and shall recover threefold the damages by him sustained, and the costs of suit, including a reasonable attorney's fee.

Received by the President August 15, 1894, and not being returned within ten days became a law without his approval.

24 STATUTES AT LARGE, 379.

AN ACT to regulate commerce.¹

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

§ 1. That the provisions of this act shall apply to any common carrier or carriers engaged in the transportation of passengers or property wholly by railroad, or partly by railroad and partly by water when both are used, under a common control, management, or arrangement, for a continuous carriage or shipment, from one State or Territory of the United States, or the District of Columbia, to any other State or Territory of the United States, or the District of Columbia, or from any place in the United States to an adjacent foreign country, or from any place in the United States through a foreign country to any other place in the United States, and also to the transportation in like manner of property shipped from any place in the United States to a foreign country and carried from such place to a port of transshipment, or shipped from a foreign country to any place in the United States and carried to such place from a port of entry either in the United States or an adjacent foreign country:

Provided, however, That the provisions of this act shall not apply to the transportation of passengers or property, or to the receiving, delivering, storage, or handling of property, wholly within one state, and not shipped to or from a foreign country from or to any State or Territory as aforesaid.

The term "railroad" as used in this act shall include all bridges and ferries used or operated in connection with any railroad, and also all the road in use by any corporation operating a railroad, whether owned or operated under a contract, agreement, or lease; and the term "transportation" shall include all instrumentalities of shipment or carriage.

* * *

§ 5. That it shall be unlawful for any common carrier subject to the provisions of this act to enter into any contract, agreement or combination with any other common carrier or carriers for the pooling of freights of different and competing railroads, or to divide between them the aggregate or net proceeds of the earnings of such railroads, or any portion

¹ The parts of the act not relating to combinations are omitted.

thereof; and in any case of an agreement for the pooling of freights as aforesaid, each day of its continuance shall be deemed a separate offense.

§ 7. That it shall be unlawful for any common carrier subject to the provisions of this act to enter into any combination, contract, or agreement, expressed or implied, to prevent, by change of time schedule, carriage in different cars, or by other means or devices, the carriage of freights from being continuous from the place of shipment to the place of destination. * * *

[February 4, 1887.]

CASES CONSTRUING STATUTES.

United States v. Jellico Mountain Coal and Coke Co. et al.

46 Fed., 432.

June 4, 1891.

43 Fed., 898.

October 13, 1890.

Statement.

Owners of Kentucky coal mines and the coal dealers in Nashville, Tennessee, formed a combination whereby all the Nashville dealers should sell coal at the same price, said price to be fixed by the combination; and the mines agreed to sell no coal in Nashville to any person not a member of the combination. The United States brings suit, under the Trust Act of 1890, to enjoin proceedings under this agreement.

Opinion on preliminary hearing.

A preliminary injunction was refused, the court saying: "It is manifest that the act is new and this a most important application of it. It would more injure the defendants to grant this preliminary injunction if, on the final hearing, it should turn out that the case does not fall within the act than it would injure the public to withhold the injunction until the final hearing, and the more since the United States gives no bond to protect the defendants against that injury as a private suitor would be compelled to do."

Opinion on final hearing.

In making the agreement the transportation of the coal from Kentucky to Nashville, Tennessee, was a necessary incident to, and element in, the arrangement, and its execu-

tion would have been impossible without it. It was to all intents and purposes commerce between states, and as it is clear that it was a combination in restraint of trade, it falls within the Trust Act.

Defendants are enjoined.

Bishop v. American Preservers' Co. et al.

51 Fed., 272.

June 8, 1892.

The Trust Act (26 St. at Large, 209) which forbids combinations in restraint of interstate commerce, and gives a right to sue for damages to any person injured by acts in violation of its provisions, does not authorize suit where the only cause of action is the bringing of two suits which have not been decided.

In re Corning et al.

United States v. Greenhut et al.

51 Fed., 205.

June 11, 1892.

Statement.

An indictment against the prisoners charges that they, prior to the act of July 2, 1890, by lease or purchase acquired some 70 distilleries throughout the several states of the Union, and from them produced 77,000,000 gallons of distillery products, which then constituted $\frac{3}{4}$ of the entire amount of such products in the United States, and that they continued to operate said distilleries on the same extensive scale after the act became a law; that part of these products were shipped to Massachusetts, to be sold there and for transportation to other states, and to be sold by defendants to dealers, under a promise on the part of the defendants that if said dealers should purchase their distillery products exclusively from the defendants, and should sell such products not below certain prices, then defendants would pay said dealers a rebate of five cents a gallon on all their purchases. Defendants are arrested and ask for a writ of *habeas corpus*.

Opinion.

The acts alleged do not constitute a crime. To have committed a crime the defendants must have obligated the vendors of the distilleries not to build others, or to withhold their capital or experience from the business; or they must have required an agreement from the dealers that they would

buy all their liquors of defendants, or that they would not sell below a given price.

Defendants are discharged.¹

In re Terrell.

United States v. Greenhut et al.

51 Fed., 213.

June 28, 1892.

Statement.

Defendants made an agreement with Massachusetts dealers that if they should purchase all their distilled spirits of defendants they would give such dealers a rebate. The dealers did not bind themselves to buy of no other manufacturer. Suit is brought against the defendants by the United States for violating the Trust Act.

Opinion.

The dealers were entirely free to buy from whom they chose and to sell at any price they pleased. "The statute does not prohibit the offering of special inducements to such purchasers as shall make all their purchases from a single concern, even though those inducements be so favorable as to accomplish their object."

The defendants are released.

United States v. Nelson et al.

52 Fed., 646.

District Court, October 10, 1892.

Statement.

The defendants were separate dealers in lumber in numerous towns and cities in several states.

September 7th, 1892, at Minneapolis, they agreed to, and did, raise the price of lumber 50 cents on a thousand feet in Wisconsin, Minnesota, Iowa, Illinois, and Missouri. An indictment is brought against defendants charging these facts.

Opinion.

"Unless the agreement involves an absorption of the entire traffic in lumber, and is entered into for the purpose of obtain-

¹Several other members of the distilling company were arrested under indictments substantially like the one here considered and they were discharged in the same manner as the defendants in this case. The decisions are found in *In re Greene*, 52 Fed., 104, and *In re Terrell*, 51 Fed., 213.

ing the entire control of it with the object of extortion, it is not objectionable to the statute."

A demurrer to the indictment is sustained.

Blindell et al. v. Hagan et al.

54 Fed., 40.

Circuit Court, February 9, 1893.

Statement.

The complainants are owners of the steamship *Violante*, which they are using in the carrying trade between New Orleans and Liverpool. The defendants have combined to prevent complainants from obtaining a crew for the *Violante*. Complainants seek an injunction founded on the following provision of the Trust Act:

"The several circuit courts of the United States are hereby invested with jurisdiction to prevent and restrain violations of this act; and it shall be the duty of the several district attorneys of the United States * * * to institute proceedings in equity to prevent and restrain such violations." 26 St. at Large, 209.

Opinion.

The Trust Act is not meant to allow an individual the right to an injunction. An injunction can only be granted when the United States is complainant.¹

Injunction is refused under the Trust Act, but is granted on other grounds.

United States v. Patterson et al.

55 Fed., 605.

Circuit Court, February 28, 1893.

This case decides as to the sufficiency of an indictment, holding part of it bad and the remainder good. Under the Trust Act of 1890 it is insufficient for an indictment to declare the crime in the words of the statute, but it must state the means whereby it is sought to monopolize the market; and it must state such a purpose to restrain trade as is implied in the common law term "contract in restraint of trade."

¹ The same point is decided in the same way in *Pidcock v. Harrington et al.*, 64 Fed., 821, *Greer Mills & Co. v. Stroller et al.*, 77 Fed., 1; *Gulf, C. & S. F. Ry. Co. et al. v. Miami S. S. Co.*, 86 Fed., 407; and in *Southern Indiana Exp. Co. v. the United States Exp. Co. et al.*, 88 Fed., 659.

United States v. Workingmen's Amalgamated Council of New Orleans et al.

54 Fed., 994.

Circuit Court, March 25, 1893.

Statement.

In New Orleans a difference had sprung up between the warehousemen and their employees and the principal draymen and their subordinates. With the view and purpose to compel an acquiescence on the part of the employers in the demands of the employed all the members of the labor associations were made by their officers, who had authority under their various charters, to discontinue business, and one of these kinds of business was transporting goods which were being conveyed from state to state, and to and from foreign nations. By the intended effects of the doings of the defendants, goods in the commerce of the country could not be moved. These acts are sought to be enjoined.

Opinion.

If a combination affects interstate commerce, it falls within the Trust Act whether it be a combination of capital or labor.

The said interference with interstate commerce is enjoined.

Waterhouse et al v. Comer.

55 Fed., 149.

Circuit Court, April 8, 1893.

In considering an application of the Brotherhood of Locomotive Engineers the following section of their rules was declared to be in violation of the Trust Act of 1890: "That hereafter when an issue has been sustained by the grand chief and carried into effect by the Brotherhood of Locomotive Engineers it shall be recognized as a violation of the obligation if a member of the Brotherhood of Locomotive Engineers who may be employed on a railroad run in connection with, or adjacent to, said road to handle the property belonging to said road or system in any way that may benefit said company with which the Brotherhood of Locomotive Engineers are at issue until the grievances or issues of difference of any nature or kind have been amicably settled."

Dueber Watch Case Manufacturing Co. v. E. Howard Watch and Clock Co. et al.*55 Fed., 851.**Circuit Court, May 22, 1893.***Statement.**

Defendants are sellers of watches and watch cases throughout the United States and Canada. Plaintiff is a manufacturer of watch cases, which it sells throughout the United States and foreign countries. In 1887, defendants agreed among themselves, and gave notice to plaintiff's customers, that they would sell no goods to anyone buying or selling plaintiff's goods. After the Trust Act was passed, in 1890, defendants renewed the agreement, and as a result plaintiff has been greatly damaged in its business. It sues to recover threefold the damages sustained.

Opinion.

It is a legal act, within the provisions of the law in question, for two or more traders to agree among themselves that they will not deal with those who purchase goods of another designated trader in the same business.

A demurrer to the complaint is sustained.

United States v. Debs et al.*64 Fed., 724.**Circuit Court, December 14, 1894.*

Consideration of the Trust Act is unessential to the decision of this case, but the following points are decided:

1. That the Trust Act forbids combinations of labor in restraint of commerce as much as it does combinations of capital.

2. The granting of power to the circuit courts to prevent and restrain violations of the Trust Act is not an invasion of the right to trial by jury as the jurisdiction of equity will be deemed to be limited to such cases only as are of equitable cognizance.

United States v. E. C. Knight Co.*156 U. S., 1.**January 21, 1895.***Statement.**

The American Sugar Refining Company, a New Jersey corporation, being in control of a large majority of the manufactories of refined sugar in the United States, purchased stock

in four Philadelphia refineries, which gave it a practical monopoly of the sugar business throughout the United States. The United States brings a bill to have the purchases set aside as contrary to the Trust Act; and for other relief.

Opinion.

The Trust Act was passed concerning commerce among the states. Unless refining sugar is a part of interstate commerce, the Trust Act does not apply. "The regulation of commerce applies to the subjects of commerce and not to matters of internal police. Contracts to buy, sell, or exchange goods to be transported among the several states, the transportation and its instrumentalities, and articles bought, sold, or exchanged for the purposes of such transit among the states, or put in the way of transit, may be regulated, but this is because they form part of interstate trade or commerce. The fact that an article is manufactured for export to another state does not of itself make it an article of interstate commerce, and the intent of the manufacturer does not determine the time when the article of product passes from the control of the state and belongs to commerce." Some of the sugar refined is used within the state and some is sent out of the state; and this is true of the wheat, corn, cotton and cattle that are raised, and of nearly everything that is manufactured. To hold this a part of interstate commerce would give the United States, in the grant to regulate commerce among the states, control of nearly all the business in the states. It was never intended to give such power to the national government. It must be held that an article does not become a part of interstate commerce until it is started for another state; therefore, monopolies in the manufacture of a necessary of life are not covered by the Trust Act. "There was nothing in the proofs to indicate any intention to put a restraint upon trade or commerce, and the fact, as we have seen, that trade or commerce might be indirectly affected, was not enough to entitle complainants to a decree."

The bill is dismissed.

American Soda-Fountain Co. v. Green et al.

69 Fed., 333.

June 4, 1895.

Statement.

In a suit for infringement of a patent relating to soda-water fountains, the answer alleged that complainant company was an illegal combination formed by a great number of manufac-

turers of soda-water apparatus fixing the price thereof, and restraining competition; that in furtherance of this object it had acquired a large number of patents, and that in bringing this suit the complainants sought to harass defendants and destroy their business, because they refused to join the combination.

Opinion.

Held that although this was true it was no defense.

United States v. Addyston Pipe and Steel Co. et al.

78 *Fed.*, 712.

Circuit Court, 1897.

85 *Fed.*, 271.

Circuit Court of Appeals, 1898.

— *U. S.*, —.

Supreme Court, 1899.

Statement.

Defendants are six corporations, manufacturers of cast-iron pipe. They supply such pipe throughout 36 states. An association was formed by them whereby they agreed not to compete with each other. This agreement was to be carried out thus: A committee of a representative from each corporation set the price for each job, and the corporation that would give the largest bonus for the job got it, the others putting in higher bids to make an apparent competition.

The United States brings suit under the Trust Act to break up this association.

Opinion of Circuit Court.

“The object of the bonus and of the association really is not to prevent all members of the association from furnishing and shipping their manufactured products, but to determine among themselves which one of them shall do so. There is certainly no restraint in this.” It is held that this agreement does not directly restrain commerce, and that to fall within the Trust Act the combination must directly affect interstate commerce.

The bill is dismissed.

Opinion of Circuit Court of Appeals.

“The subject-matter of the restraint here was not articles of merchandise or their manufacture, but contracts for sale of such articles to be delivered across state lines and the negotiations and bids preliminary to the making of such contracts, all of which * * * do not merely affect interstate commerce but are interstate commerce.” Within a limit the

defendants could fix prices as they chose. The restraint imposed was only partial. It did not cover the United States. There was not a complete monopoly. It was tempered by the fear of competition, and it affected only a part of the price. But this fact does not take the contract of association out of the annulling effect of the rule against monopolies. "All the authorities agree that in order to vitiate a contract or combination, it is not essential that its result should be a complete monopoly; it is sufficient if it really tends to that end and to deprive the public of the advantages which flow from free competition." Nor at common law is there any question of reasonableness of price open to the courts with reference to such a contract for monopoly. Its tendency is to give power to charge unreasonable prices if the parties choose to do so. "For the reasons given [that the contracts are monopolistic and are a restraint upon interstate commerce and hence a violation of the Trust Act], the decree of the circuit court dismissing the bill must be reversed with instructions to enter a decree for the United States perpetually enjoining the defendants from maintaining the combination in cast-iron pipe described in the bill."

Opinion of Supreme Court.

Application of statute.

"As has frequently been said, interstate commerce consists of intercourse and traffic between the citizens or inhabitants of different states, and includes not only the transportation of persons and property and the navigation of public waters for that purpose, but also the purchase, sale and exchange of commodities. * * * If, therefore, an agreement or combination directly restrains not alone the manufacture, but the purchase, sale or exchange of the manufactured commodity among the several states, it is brought within the provisions of the statute. The power to regulate such commerce, that is, the power to prescribe the rules by which it shall be governed, is vested in Congress, and when Congress has enacted a statute such as the one in question, any agreement or combination which directly operates not alone upon the manufacture, but on the sale, transportation and delivery of any article of interstate com-

merce by preventing or restricting its sale, etc., thereby regulates interstate commerce to that extent, and to the same extent trenches upon the power of the National Legislature and violates the statute."

Regulation of commerce may restrict individual contracts.

It has been declared "that the power of Congress to regulate commerce was never intended to be exercised so as to interfere with private contracts not designed at the time they were made to create impediments to such commerce;" but that "the reason for vesting in Congress the power to regulate commerce was to insure uniformity of regulation against conflicting and discriminating state legislation.

"It is undoubtedly true that among the reasons, if not the strongest reason, for placing the power in Congress to regulate interstate commerce was that which is stated.

"The reasons which may have caused the framers of the Constitution to repose the power to regulate interstate commerce in Congress do not, however, affect or limit the extent of the power itself.

"In *Gibbons v. Ogden* (supra) the power was declared to be complete in itself and to acknowledge no limitations other than are prescribed by the Constitution.

"Under this grant of power to Congress that body, in our judgment, may enact such legislation as shall declare void and prohibit the performance of any contract between individuals or corporations where the natural and direct effect of such a contract will be, when carried out, to directly and not as a mere incident to other and innocent purposes regulate to any substantial extent interstate commerce. (And when we speak of interstate we also include in our meaning foreign commerce.) We do not assent to the correctness of the proposition that the constitutional guaranty of liberty to the individual to enter into private contracts limits the power of Congress and prevents it from legislating upon the subject of contracts of the class mentioned.

"The power to regulate interstate commerce is, as stated by Chief Justice Marshall, full and complete in Congress, and there is no limitation in the grant of the power which excludes private contracts of the nature in question from the jurisdiction of that body. Nor is any such limitation contained

in that other clause of the Constitution which provides that no person shall be deprived of life, liberty, or property without due process of law. It has been held that the word liberty, as used in the Constitution, was not to be confined to the mere liberty of person, but included, among others, a right to enter into certain classes of contracts for the purpose of enabling the citizen to carry on his business. (*Allgeyer v. Louisiana*, 165 U. S., 578; *United States v. Joint Traffic Association*, 171 id., 505, 572.) But it has never been, and in our opinion ought not to be, held that the word included the right of an individual to enter into private contracts upon all subjects, no matter what their nature, and wholly irrespective (among other things) of the fact that they would, if performed, result in the regulation of interstate commerce and in the violation of an act of Congress upon that subject.

“The provision in the Constitution does not, as we believe, exclude Congress from legislating with regard to contracts of the above nature while in the exercise of its constitutional right to regulate commerce among the states. On the contrary, we think the provision regarding the liberty of the citizen is, to some extent, limited by the commerce clause of the Constitution, and that the power of Congress to regulate interstate commerce comprises the right to enact a law prohibiting the citizen from entering into those private contracts which directly and substantially, and not merely indirectly, remotely, incidentally, and collaterally, regulate to a greater or less degree commerce among the states.”

“If certain kinds of private contracts do directly * * * limit or restrain, and hence regulate interstate commerce, why should not the power of Congress reach those contracts just the same as if the legislature of some state had enacted the provisions contained in them? The private contracts may in truth be as far-reaching in their effect upon interstate commerce as would the legislation of a single state of the same character.”

“The power of Congress over this subject seems to us much more important and necessary than the liberty of the citizen to enter into contracts of the nature above mentioned, free from the control of Congress, because the direct results of such contracts might be the regulation of commerce among the states possibly quite as effectually as if a state had passed a statute of like tenor as the contract. * * * We conclude

that the plain language of the grant to Congress of power to regulate commerce among the several states includes power to legislate upon the subject of those contracts in respect to interstate or foreign commerce which directly affect and regulate that commerce, and we can find no reasonable ground for asserting that the constitutional provision as to the liberty of the individual limits the extent of that power."

Arbitrary increase in price is a restraint.

"If iron pipe cost \$100 a ton instead of the prices which the record shows were paid for it, no one, we think, would contend that the trade in it would amount to as much as if the lower prices prevailed. The higher price would operate as a direct restraint upon the trade, and therefore any contract or combination which enhanced the price might in some degree restrain the trade in the article. It is not material that the combination did not prevent the letting of any particular contract. Such was not its purpose. On the contrary, the more contracts to be let the better for the combination. It was formed not for the object of preventing the letting of contracts, but to restrain the parties to it from competing for contracts and thereby to enhance the prices to be obtained for the pipe dealt in by those parties. And when by reason of the combination a particular contract may have been obtained for one of the parties thereto, but at a higher price than would otherwise have been paid, the charge that the combination was one in restraint of trade is not answered by the statement that the particular contract was in truth obtained and not prevented. The parties to such a combination might realize more profit by the higher prices they would secure than they could earn by doing more work at a much less price. The question is as to the effect of such combination upon the trade in the article, and if that effect be to destroy competition and thus advance the price, the combination is one in restraint of trade."

Contract may be in restraint of trade among states though articles are subject to taxation in one state.

"Decisions regarding the validity of taxation by or under state authority, involving sometimes the question of the point of time that an article intended for transportation beyond the state ceases to be governed exclusively by the

domestic law and begins to be governed and protected by the national law of commercial regulation, are not of very close application here. The commodity may not have commenced its journey and so may still be completely within the jurisdiction of the state for purposes of state taxation, and yet at that same time the commodity may have been sold for delivery in another state. Any combination among dealers in that kind of commodity which in its direct and immediate effect forecloses all competition and enhances the purchase price for which such commodity would otherwise be delivered at its destination in another state, would, in our opinion, be one in restraint of trade or commerce among the states, even though the article to be transported and delivered in another state were still taxable at its place of manufacture."

But commerce within a state can not be interfered with by the statute.

"The views above expressed lead generally to an affirmance of the judgment of the court of appeals. In one aspect, however, that judgment is too broad in its terms—the injunction is too absolute in its directions—as it may be construed as applying equally to commerce wholly within a state as well as to that which is interstate or international only. This was probably an inadvertence merely. Although the jurisdiction of Congress over commerce among the states is full and complete, it is not questioned that it has none over that which is wholly within a state, and therefore none over combinations or agreements so far as they relate to a restraint of such trade or commerce. It does not acquire any jurisdiction over that part of a combination or agreement which relates to commerce wholly within a state by reason of the fact that the combination also covers and regulates commerce which is interstate. The latter it can regulate, while the former is subject alone to the jurisdiction of the state. The combination herein described covers both commerce which is wholly within a state and also that which is interstate.

"In regard to such of these defendants as might reside and carry on business in the same state where the pipe provided for in any particular contract was to be delivered, the sale, transportation, and delivery of the pipe by them under that contract would be a transaction wholly within the state, and the statute would not be applicable to them in that case.

They might make any combination they chose with reference to the proposed contract, although it should happen that some nonresident of the state eventually obtained it.

“The fact that the proposal called for the delivery of pipe in the same state where some of the defendants resided and carried on their business would be sufficient, so far as the act of Congress is concerned, to permit those defendants to combine as they might choose in regard to the proposed contract for the delivery of the pipe, and that right would not be affected by the fact that the contract might be subsequently awarded to some one outside the state as the lowest bidder. In brief, their right to combine in regard to a proposal for pipe deliverable in their own state could not be reached by the Federal power derived from the commerce clause in the Constitution.

“To the extent that the present decree includes in its scope the enjoining of defendants thus situated from combining in regard to contracts for selling pipe in their own state it is modified and limited to that portion of the combination or agreement which is interstate in its character. As thus modified, the decree is affirmed.”

In re Grice.

79 Fed. Rep., 627.

February 22, 1897.

Statement.

The Texas anti-trust law of 1889 makes it a crime for two or more persons to unite to raise or lower prices or limit the production of an article. It provides that persons outside of the state who commit these acts within the state are guilty of a violation of the act. It exempts from its operation agricultural products and live stock while in the hands of the raiser or producer.

John D. Rockefeller and several others, including the relator Grice, were indicted for violating this statute. Grice was imprisoned, and brought habeas corpus proceedings in the circuit court of the United States claiming that the statute is unconstitutional.

Opinion.

Swayne, district judge, who heard the case, held that the law was unconstitutional because it could not affect people outside of the state; that the state can not pass a law prohibiting reasonable restriction of trade, and reasonable combinations; that these rights are guaranteed by the federal

constitution, and that reasonable combinations are by this law prohibited; that four-fifths of the people in Texas are farmers and cattle raisers, and that a law which exempts four-fifths of the people from its operation is unreasonable class legislation, and is void under the constitutional clause that provides that no state shall deny to any person within its jurisdiction the equal protection of the laws.

The relator is discharged.

United States v. Trans-Missouri Freight Association.

166 U. S., 290.

March 22, 1897.

Statement.

Defendants are a large number of railroad companies which entered into an agreement to establish and maintain rates on all freight traffic. The United States brings suit to enjoin defendants on the ground that the agreement is in violation of the Trust Act. Defendants claim :

1. That Congress did not intend the Trust Act to apply to railroads, because the Interstate Commerce Act impliedly gave railroads the right to fix rates; and if Congress had intended to change the Commerce Act by the Trust Act it would have said so.

2. The Trust Act does not apply to reasonable restraint of trade, and the agreement in question provides for only reasonable restraint of trade.

Opinion.

1. The Commerce Act and the Trust Act are consistent with each other and, therefore, the Trust Act applies to railroads just as if there were no Commerce Act.

2. The Trust Act says *every* contract in restraint of trade. Therefore, the courts have no right to confine the scope of the Act to contracts in unreasonable restraint of trade. It includes all contracts in restraint of trade whether reasonable or unreasonable.

The agreement violates the Trust Act, and an injunction is proper.

Pierre V. A. Brett v. Martin C. Ebel et al.

29 N. Y. App. Div., 256.

May, 1898.

Statement.

Plaintiff and defendants were engaged in the business of ship brokers, chartering vessels from various ports in the West Indies and South America. Plaintiff sold defendants

“all his interest and good will in the business of freighting vessels from Port au Prince and said Brett’s Line, Haiti Packets,” and, for \$1,800 a year, promised that while H. Becker & Co. or their successors made shipments by sail to Port au Prince he would not solicit freights or do any business with Port au Prince in or from any place in the United States east of the Mississippi River. Plaintiff sues to recover money due under this contract and is met by the defense that the contract is illegal, being contrary to the United States Trust Act of 1890.

Opinion.

The Federal act “certainly was not intended to prohibit a man from selling his business in the ordinary way and from thereupon obtaining the full value thereof through the instrumentality of an incidental covenant not to compete with the purchaser within some limited area. * * * In our judgment the present contract is not in contravention of this Federal act. It certainly is not within its spirit. If that act were to be construed literally and technically so as to embrace such a contract as the present, it would involve consequences most harmful to the commercial community.”

The contract was legal.

United States v. Hopkins et al.

82 Fed., 529.

Circuit Court, September 20, 1897.

171 U. S., 578.

October 24, 1898.

Statement.

Defendants were engaged as commission merchants in receiving, buying, selling, and handling live stock at the Kansas City stock-yards. These stock-yards furnished the only available public market for that purpose for an area including many states and territories. Defendants formed themselves into an association agreeing upon certain limits to the commissions charged and the number of persons that each member could employ to travel and solicit business, and agreeing that members should do no business with nonmembers. The United States seeks to enjoin defendants from acting under this agreement.

Opinion of the Circuit Court.

By receiving stock from foreign states and shipping stock to foreign states, defendants are engaged in interstate commerce. The agreement is in restraint of interstate commerce.

The Trust Act prohibits all restraints upon interstate trade, and it is immaterial under that law whether the restraints be reasonable or unreasonable. The injunction is granted.

Opinion of the United States Supreme Court.

The business of the members of this exchange is not interstate commerce. It affects it indirectly, but that is all. "The services of members of the different stock and produce exchanges throughout the country in effecting sales of the articles they deal in are of a similar nature. Members of the New York Stock Exchange buy and sell shares of stock of railroads and other corporations, and the property represented by such shares of stock is situated all over the country. Is a broker whose principal lives outside of New York state, and who sends him the shares of stock or the bonds of a corporation created and doing business in another state, for sale, engaged in interstate commerce? * * * We think it would be an entirely novel view of the situation if all the members of these different exchanges throughout the country were to be regarded as engaged in interstate commerce.

The bill of the United States is discharged.

United States v. Coal Dealers' Association of California et al.

85 Fed., 252.

Circuit Court, January 28, 1898.

Statement.

Practically all the coal used in San Francisco is mined in Washington, Oregon and British Columbia. A very large number of the coal dealers in San Francisco formed themselves into an association, agreeing not to sell coal below certain prices. This association entered into a contract with the producers of coal in Washington, Oregon and British Columbia whereby the producers agreed to cooperate with the association to carry out its purposes, and the producers agreed not to sell coal to any non-member except for a much higher price than they charged members. United States seeks to enjoin proceedings under this arrangement.

Opinion of the court.

The combination affects the sale of coal as soon as it arrives in San Francisco from other states and before it has become a part of the mass of property in the state. Until it has become part of the mass of property in the state it remains in interstate commerce, and therefore comes under

the Trust Act. It is unnecessary to discuss whether the restraint is reasonable, for the Trust Act forbids all restraints reasonable or not.

Injunction is granted.

Anderson v. United States.

171 U. S., 604.

October 24, 1898.

Statement.

Plaintiff was a member of the Traders' Live Stock Exchange, an association composed of live stock buyers at Kansas City. He was enjoined by the Circuit Court from acting under the following rules of the exchange: "This exchange will not recognize any yard trader unless he is a member of the Traders' Live Stock Exchange. When there are two or more parties trading together as partners, they shall each and all of them be members of this exchange. No member of this exchange shall employ any person to buy or sell cattle unless such person hold a certificate of membership in this exchange. No member of this exchange shall be allowed to pay any order buyer or salesman any sum of money as a fee for buying cattle from or selling cattle to such party." An appeal was taken to the Supreme Court.

Opinion.

This association does not meddle with prices. In refusing to recognize any yard trader who is not a member of the exchange there is no purpose of thereby affecting or restraining interstate commerce. If that is affected at all, it is in a very remote manner. The rules have no direct tendency to restrain in any way interstate commerce in the cattle dealt in. Whether or not the business engaged in is interstate commerce is not decided.

The bill by the United States is dismissed.

United States v. Joint Traffic Association.

171 U. S., 505.

October 24, 1898.

Statement.

Thirty-one railroad companies, engaged in transportation between Chicago and the Atlantic coast, formed themselves into an association known as the Joint Traffic Association, which was to determine what rates should be charged, and what portion of the business each company should do, so far

as possible without violating the Interstate Commerce Act, or any other law applicable, or any provision of the charters of the companies. Every company was to follow the schedule of rates recommended by the managers of the association, except that any company's board of directors might disapprove the rates so fixed, and after thirty days' notice to the managers of the association, so far as the interest of that company was concerned, the rates need not be followed. The United States brought a bill in a Circuit Court to have proceedings under the agreement enjoined. The bill was there dismissed. On appeal to a Circuit Court of Appeals, the decision was affirmed. The United States now appeal again to the United States Supreme Court.

Opinion.

The natural, direct and necessary effect of the provisions of the agreement is to prevent any competition between the parties to it. The agreement affects interstate commerce by destroying competition. The power given Congress by the Constitution to regulate interstate commerce vests it with power to declare that no contract or combination shall be legal which restrains trade by shutting out the operation of the general law of competition; and Congress has exercised this power by passing the Trust Act of 1890. This act does not deprive the citizen of the liberty guaranteed him by the fifth amendment to the Constitution. The act is constitutional, and following the construction given it in the *Trans-Missouri* case,¹ this combination is in violation of it.

The judgments of the lower courts are reversed, and the case remanded to the Circuit Court with instructions to take such further proceedings therein as may be in conformity with the opinion of the Supreme Court.

Harry W. Dickerman, Trustee, et al. v. The Northern Trust
Company et al.

— U. S., —.

January 22, 1900.

Statement.

The Columbia Straw Paper Company, organized under the laws of New Jersey, obtained control of forty paper mills. In doing this a mortgage was given on its property to secure the payment of bonds. The bonds passed into the hands of

¹ 166 U.S., 290; digested, p. 48.

holders in good faith for value. The bonds not being paid, though due, a bill is filed to foreclose the mortgage. One defense is that the mortgage is part of a scheme to form an unlawful combination in restraint of trade, in violation of the act of Congress of July 2, 1890.

Opinion of the United States Supreme Court.

“If this were a proceeding in *quo warranto* to attack the organization of the corporation * * * or an action against a member of the combination to enforce any of the provisions of the original contract, the validity of such contract would become an important question. But in a suit to foreclose a mortgage upon the property of the concern it is difficult to see how the purpose for which the corporation was originally organized can become a material inquiry. So long as the corporation existed it had the power to create a mortgage, and when the mortgage became due the trustee had a right to foreclose.”

The mortgage can be foreclosed.

COMMON-LAW DECISIONS.

American Biscuit and Manufacturing Co. v. Klotz et al.

44 Fed., 721.

January 8, 1891.

Plaintiff had purchased with its stock thirty-five large bakeries. One of these, claiming that the sale was void, took possession of its property and tendered back the stock received in payment. Plaintiff comes into equity and asks that an injunction issue. An injunction is denied. It is suggested that the combination would be illegal by the Louisiana statute or by the United States Trust Act of 1890, and that such a combination being against public policy should not be aided by an equity court in any way. It is not *decided* that the anti-trust acts apply. The decision rests on the ground that such a combination is not to be aided by a court of equity.

Central Transportation Company v. Pullman's Palace Car Company.

139 U. S., 24.

March 2, 1891.

Statement.

Plaintiff corporation held a ninety-nine-year charter “to carry on the business of manufacturing sleeping cars under its patents and of hiring or letting the cars or other personal

property to other corporations." A contract was made between plaintiff and defendant whereby plaintiff transferred to defendant all its cars, contracts, patents and other property for ninety-nine years and agreed not to engage in its then business for that time; for which defendant promised to pay \$264,000 rent a year. Plaintiff brings suit to recover \$198,000 rent due.

Opinion.

Where a corporation has granted to it a franchise intended in a large measure to be exercised for the public good, the due performance of its functions being the consideration of the public grant, any contract which disables the corporation from performing its functions, or which undertakes without the consent of the state, to transfer to others the rights conferred by the charter, and to relieve the grantees of the burden which it imposes, is a violation of the contract with the state and is void as against public policy.

Plaintiff can not recover.

National Harrow Co. v. Quick et al.

67 Fed., 130.

March 23, 1895.

Statement.

Plaintiff is a corporation formed to secure assignments of all patents relating to spring-tooth harrows; to grant licenses to the assignors to use the patents upon payment of a royalty; and to fix the prices at which such harrows should be sold. Defendants have infringed one of the patents thus secured, and suit is brought to have them enjoined.

Opinion.

Judge Baker: "It seems to me that such a combination is illegal. * * * The common law forbids the organization of such combinations, composed of numerous corporations and firms. They are dangerous to the peace and good order of society. * * * It seems to me that the court can not sustain the present bill without giving aid to the unlawful combination or trust represented by the complainant. The question is not free from doubt, but in a case of doubt I feel it my duty to resolve it in such a way as will not lend the countenance of the court to the creation of combinations, trusts or monopolies. They have already grown to alarming proportions, and courts, to the extent of their power, ought to discountenance them."

Equity refuses aid.

CASES SHOWING POWERS OF CONGRESS AND STATE LEGISLATURES.

McCulloch v. The State of Maryland et al.4 *Wheat.*, 316.

1819.

Statement.

The State of Maryland passed "an act to impose a tax on all banks, or branches thereof, in the State of Maryland, *not chartered by the legislature.*" The Bank of the United States, a corporation organized by act of Congress, had a branch in Maryland, which it was sought to tax under the act aforesaid. Two main questions were raised:

1. Was the act incorporating the bank constitutional?
2. Could a state tax a corporation created by Congress?

Opinion by Chief Justice Marshall.

In the Constitution "we find the great powers to lay and collect taxes; to borrow money; to regulate commerce; to declare and conduct a war; and to raise and support armies and navies. * * * But that instrument does not profess to enumerate the means by which the powers it confers may be executed; nor does it prohibit the creation of a corporation, if the existence of such a being be essential to the beneficial exercise of these powers. * * * We admit, as all must admit, that the powers of the government are limited, and that its limits are not to be transcended. But we think the sound construction of the Constitution must allow to the national legislature that discretion with respect to the means by which the powers it confers are to be carried into execution, which will enable that body to perform the high duties assigned to it in the manner most beneficial to the people. Let the end be legitimate, let it be within the scope of the Constitution, and all means which are appropriate, which are plainly adopted to that end, which are not prohibited, but consist with the letter and spirit of the Constitution, are constitutional." "Where the law is not prohibited, and is really calculated to effect any of the objects entrusted to the government, to undertake here to inquire into the degree of its necessity would be to pass the line which circumscribes the judicial department, and to tread on legislative ground." The bank is a proper agency for carrying into effect the expressed powers of the Constitution hereinbefore mentioned, and "it is the unanimous and decided opinion of this court that the act to incorporate" it is constitutional.

2. The State governments have no right to tax any of the means employed by the United States government to execute its constitutional powers.

Gibbons v. Ogden.

9 *Wheat.*, 1.

1824.

Statement.

The State of New York gave Robert R. Livingston and Robert Fulton the exclusive right to navigate all waters within the jurisdiction of the state with vessels propelled by steam for a term of years. Gibbons navigated the bay of New York with a steamboat running between New York City and Elizabethport, N. J., which steamboat had been duly licensed as a coasting vessel, under acts of Congress regulating the coasting trade. Ogden, who had succeeded to the rights of Livingston and Fulton, brought suit to restrain Gibbons. The case went to the United States Supreme Court for a decision on the constitutionality of the said grant to Livingston and Fulton.

Opinion by Chief Justice Marshall.

“The sole question is, Can a state regulate commerce with foreign nations and among the several states *while Congress is regulating it?*” It can not. When the laws of Congress, enacted under the Constitution, and state laws conflict the state laws must yield. The power of Congress to regulate interstate commerce, “like all others vested in Congress, is complete in itself; may be exercised to its utmost extent, and acknowledges no limitations other than are prescribed in the Constitution.”

The grant was unconstitutional.

Brown et al. v. Maryland.

12 *Wheat.*, 413.

1827.

Statement.

The State of Maryland indicted plaintiffs for violating a statute of that state requiring any person selling foreign goods to pay \$50 license. Justice Marshall, speaking for the United States Supreme Court, said:

Opinion.

“We think, then, that the act under which the plaintiffs in error were indicted is repugnant to the article of the Constitution * * * which empowers Congress to regulate commerce * * * among the several states.”

Farmers' and Mechanics' National Bank v. Dearing.*91 U. S., 29.**October, 1875.***Statement.**

An act of Congress provided that a national bank should forfeit all interest for taking more than the legal rate in the state where situated. An act of the State of New York provided that both interest and debt should be forfeited for charging more than 6 per cent interest. Plaintiff, situated in the State of New York, loaned defendant \$2,000 on a note at ten per cent interest. Plaintiff sued on the note. The New York Court of Appeals held the note absolutely void. Plaintiff carried the case to the United States Supreme Court.

Opinion.

National banks are designed to be used to aid the government in the administration of the powers granted by the Constitution; and Congress, which is the sole judge of the necessity for their creation, having brought them into existence, the states can exercise no control over them, nor in any way affect their operation, except so far as Congress may see fit to permit. The state act must yield to the Federal act with which it conflicts.

Plaintiff can recover the principal of the note. .

Munn v. Illinois.*94 U. S., 113.**1876.***Statement.**

In 1872 Munn was manager of the Northwestern Elevator in the city of Chicago. A statute of Illinois fixed the maximum charge for storing and handling grains by warehousemen in cities of more than 100,000 inhabitants. Munn charged higher rates than the statute allowed, and was indicted. The case comes to the United States Supreme Court. Munn claims that the statute is unconstitutional because repugnant to the provisions:

1. That no State shall "deprive any person of life, liberty, or property, without due process of law."
2. That no State shall "deny to any person within its jurisdiction the equal protection of the laws," and,
3. That Congress has the power "to regulate commerce with foreign nations and among the several states."

Opinion.

“Every statute is presumed to be constitutional. * * * If there is doubt, the expressed will of the legislature should be sustained.”

1. Under the police “powers the government regulates the conduct of its citizens one towards another, and the manner in which each shall use his property, when such regulation becomes necessary for public good. In their exercise it has been customary in England from time immemorial, and in this country from its first colonization, to regulate ferries, common carriers, hackmen, bakers, millers, wharfingers, innkeepers, etc., and in so doing to fix a maximum of charge to be made for services rendered, accommodations furnished, and articles sold. * * * From this it is apparent that, down to the time of the adoption of the Fourteenth Amendment, it was not supposed that statutes regulating the use of private property necessarily deprived an owner of his property without due process of law. Under some circumstances they may, but not under all. *The amendment does not change the law in this particular.*” Elevators, like inns, are impressed with a public interest, and so the state can regulate them without “depriving any person of * * * property, without due process of law,” as the expression is used in the Fourteenth Amendment.

2. “After what has already been said, it is unnecessary to refer at length to the other provision of the Fourteenth Amendment which is relied upon, viz, that no state shall ‘deny to any person within its jurisdiction the equal protection of the laws.’ Certainly, it can not be claimed that this prevents the state from regulating the fares of hackmen or the charges of draymen in Chicago, unless it does the same thing in every other place within its jurisdiction. But, as has been seen, the power to regulate the business of warehouses depends upon the same principle as the power to regulate hackmen and draymen,” and what can be done in the one case can be done in the other.

3. “The warehouses” in question “are situated and their business carried on exclusively within the limits of the State of Illinois. They are used as instruments by those engaged in state as well as those engaged in interstate commerce, but they are no more necessarily a part of commerce itself than the dray or the cart by which, but for them, grain would be

transferred from one railroad station to another. Incidentally they may become connected with interstate commerce, but not necessarily so. Their regulation is a thing of domestic concern, and, certainly, until Congress acts in reference to their interstate relations, the state may exercise all the powers of government over them, even though in so doing it may indirectly operate upon commerce outside its immediate jurisdiction. We do not say that a case may not arise in which it will be found that a state, under the form of regulating its own affairs, has encroached upon the exclusive domain of Congress in respect to interstate commerce, but we do say that, upon the facts as they are represented to us in this record, that has not been done."

The statute is held constitutional.

Trade-Mark Cases.

100 U. S., 82.

October, 1879.

Statement.

In 1870 Congress passed an act providing for the registration of trade-marks in the Patent Office; in 1876 another act was passed punishing the fraudulent use, sale or counterfeiting of trade-marks thus registered, the two acts being so connected that they stand or fall together. Under the latter act three persons were indicted. In defense the constitutionality of the legislation is assailed. The cases come to the Supreme Court.

Opinion.

If an act of Congress can in any case be extended, as a regulation of commerce, to trade-marks, it must be limited to their use in "commerce with foreign nations, and among the several states, and with the Indian tribes." The legislation in question is not in its terms or essential character a regulation thus limited, but in its language embraces and was intended to embrace all commerce, including that between citizens of the same state.

The acts are unconstitutional.

Walling v. The State of Michigan.

116 U. S., 446.

January 18, 1886.

Statement.

Walling, a "drummer," came to Michigan to solicit orders liquors to be shipped from Chicago, and was arrested under

a Michigan statute requiring one engaged in that business to have a license. Walling carried the case to the Supreme Court of the United States.

Opinion.

“We think that the act in question operates as a regulation of commerce among the states in a manner within the exclusive power of Congress, and that it is for this reason repugnant to the Constitution of the United States, and void.”

Robbins v. Shelby County Taxing District.

120 U. S., 489.

March 7, 1887.

Statement.

A Tennessee statute required “all drummers, and all persons not having a regular licensed house of business within the taxing district, offering for sale or selling goods, wares or merchandise therein by sample” to pay for a license. Robbins was selling goods in Tennessee by sample for a firm in Ohio. Being indicted for a breach of the said statute, Robbins brings the case before the United States Supreme Court.

Opinion.

“The negotiation of sales of goods which are in another state for the purpose of introducing them into the state in which the negotiation is made is interstate commerce.” Therefore, as applied to persons soliciting orders for houses doing business in other states, the statute in question is unconstitutional, it being inconsistent with the power of Congress to regulate commerce among the several states.

Leisy v. Hardin.

135 U. S., 100.

1890.

Statement.

A statute of Iowa prohibited the sale of any intoxicating liquors, except for pharmaceutical, medicinal, chemical or sacramental purposes, and under a license from a county court of the state. Plaintiff shipped intoxicating liquor from Illinois into Iowa and sold it there in the original packages. A large number of these packages were seized by defendant, a constable of Iowa, by virtue of the said statute. Plaintiff brings replevin to obtain possession of the liquor, claiming the statute is repugnant to the power given to Congress to regulate commerce among the states.

Opinion of Supreme Court.

“The doctrine now firmly established is, * * * ‘that where the subject upon which Congress can act under its commercial power is local in its nature or sphere of operation, such as harbor pilotage, the improvement of harbors, the establishment of beacons and buoys to guide vessels in and out of port, the construction of bridges over navigable rivers, the erection of wharves, piers and docks, and the like, which can be properly regulated only by special provisions adapted to their localities, the state can act until Congress interferes and supersedes its authority; but where the subject is national in its character, and admits and requires uniformity of legislation, affecting alike all the states, such as transportation between the states, including the importation of goods from one state into another, Congress alone can act upon it and provide the needed regulations. The absence of any law of Congress on the subject is equivalent to its declaration that commerce in that matter shall be free. Thus the absence of regulations as to interstate commerce with reference to any particular subject is taken as a declaration that the importation of that article into the states shall be unrestricted. It is only after the importation is completed, and the property imported has mingled with and become a part of the general property of the state that its regulations can act upon it, except so far as may be necessary to insure safety in the disposition of the import until thus mingled.’”

The statute in question as applied to a sale by the importer, and in the original packages or kegs, unbroken and unopened, of liquors manufactured in and brought from another state is unconstitutional and void.

In re Rahrer, Petitioner.

140 U. S., 545.

May 25, 1891.

Statement.

An act of Congress (26 Stat., 313), provides that intoxicating liquors transported into any state or remaining therein for use, sale or storage shall upon arrival in such state be subject to the laws of such state as if produced therein and shall not be exempt therefrom by reason of being introduced therein in original packages. Petitioner sold beer and whiskey in the original packages as shipped from Missouri, in Topeka, Kansas. By the law of that state this was a crime. Petitioner

is arrested, and prays for a writ of *habeas corpus*. The case comes before the United States Supreme Court for a decision on the constitutionality of the said laws.

Opinion.

“The power to regulate” interstate commerce “is solely in the general government, and it is an essential part of that regulation to prescribe the regular means for accomplishing the introduction and incorporation of articles into and with the mass of property in the country or state. No reason is perceived why, if Congress chooses to provide that certain designated subjects of interstate commerce shall be governed by a rule which divests them of that character at an earlier period of time than would otherwise be the case, it is not within its competency to do so.” The act of Congress is valid. The original laws of Kansas became operative in respect to imported packages of intoxicating liquors in their original condition as soon as the act of Congress removed the impediment.

Prayer for writ of *habeas corpus* denied.

Reagan v. Mercantile Trust Company.

154 U. S., 413.

May 26, 1894.

Statement.

The Mercantile Trust Company was trustee in a deed of trust executed by the Texas and Pacific Railway Company. The legislature of the State of Texas appointed a commission to regulate the rates to be charged by railroads for business done within the state. The Trust Company seeks to enjoin the commission from enforcing any rates against the Texas and Pacific Railway Company, on the ground that being incorporated by Congress it is not subject to state legislation. The case comes to the United States Supreme Court.

Opinion.

“Conceding to Congress the power to remove the corporation in all its operations from the control of the state, there is in the act creating this company nothing which indicates an intent on the part of Congress to so remove it, and there is nothing in the enforcement by the state of reasonable rates for transportation wholly within the state which will disable the corporation from discharging all the duties and

exercising all the powers conferred by Congress. By the act of incorporation Congress authorized the company to build its road through the State of Texas. It knew that, when constructed, a part of its business would be the carrying of persons and property from points within the state to other points also within the state, and that in so doing it would be engaged in a business, control of which is nowhere by the Federal Constitution given to Congress. It must have known that, in the nature of things, the control of that business would be exercised by the state, and if it deemed that the interests of the nation and the discharge of the duties required on behalf of the nation from this corporation demanded exemption in all things from state control, it would unquestionably have expressed such intention in language whose meaning would be clear. Its silence in this respect is satisfactory assurance that, in so far as this corporation should engage in business wholly within the state, it intended that it should be subjected to the ordinary control exercised by the state over such business. * * * We are of opinion that the Texas and Pacific Railway Company is, as to business done wholly within the state, subject to the control of the state in all matters of taxation, rates, and other police regulations."

Pollock v. Farmers' Loan and Trust Company ; Hyde v. Continental Trust Company.

158 U. S., 601.

May 20, 1895.

Statement.

It is provided in the Federal Constitution that direct taxes shall be apportioned among the states according to their representative population. In 1894 Congress passed an act imposing a tax on incomes from whatever source derived. This tax not being apportioned among the states according to their population, its constitutionality is assailed.

Opinion on first hearing.

A tax on the income of real estate is a direct tax, and in this act, not being apportioned as provided by the Constitution, is void.

A tax upon income derived from bonds issued by a municipal corporation is a tax upon the power of the state and its instrumentalities to borrow money, and is consequently repugnant to the Constitution.

Whether as to the income from personal property, as such, the act is unconstitutional as laying a direct tax, the judges who heard the argument are equally divided.

Opinion on second hearing.

A tax on real property is clearly a direct tax. A tax on personal property is a direct tax. That which gives value to real or personal property is its income. Property and its income are so closely connected that what is a direct tax upon one is a direct tax upon the other. Therefore, as the act imposes a tax on the income of real and personal property, and is not apportioned among the states according to their population, the act is unconstitutional.

Blake v. McClung.

172 U. S., 239.

December 12, 1898.

Statement.

A statute of Tennessee provides that the assets of an insolvent foreign corporation doing business in that state shall be used to pay the debts of residents of Tennessee before paying debts of residents of other states. A foreign corporation doing business in Tennessee has become insolvent. Among its creditors are residents of Tennessee, citizens of Ohio, and a corporation of Virginia. The Ohio and Virginia creditors claim a *pro rata* share in the assets with the residents of Tennessee, on the ground that the said statute is unconstitutional. The case comes to the United States Supreme Court.

Opinion.

1. As to the citizens of Ohio. "That [Tennessee] statute, by its necessary operation, excludes citizens of other states from transacting business with that corporation upon terms of equality with citizens of Tennessee." Therefore, it is in violation of the provision of the Federal Constitution that "the citizens of each state shall be entitled to all privileges and immunities of citizens in the several states."

2. As to the Virginia corporation. A corporation is not a "citizen," therefore, the aforementioned provision of the Constitution does not apply to it.

The Fourteenth Amendment provides that no state shall "deny to any person within its jurisdiction the equal protection of the laws." A corporation is a "person;" but here the phrase "within its jurisdiction" is all important. "A corporation not created by Tennessee, nor doing business there under conditions that subjected it to process issuing

from the courts of Tennessee at the instance of suitors, is not, under the above clause of the Fourteenth Amendment, within the jurisdiction of that state." The Virginia corporation "does not appear to have been doing business in Tennessee * * * under any statute that would bring it directly under the jurisdiction of the courts of Tennessee by service of process on its officers or agents. Nor do we think it came within the jurisdiction of Tennessee, within the meaning of the amendment, simply by presenting its claim in the state court and thereby becoming a party to this cause." As to the Virginia corporation the statute is constitutional.

Nicol v. Ames; In re Nichols; Skillen v. Ames, and Ingwersen v. United States.

173 U. S., 509.

April 3, 1899.

Statement.

The war revenue act of 1898 imposes a tax on "each sale, agreement of sale or agreement to sell any products or merchandise, at any exchange or board of trade or other similar place," and requires that the seller deliver to the buyer a memorandum to which a revenue stamp shall be affixed. It is contended that this provision is unconstitutional, because:

1. It is a direct tax, and is not apportioned as required by the Constitution.

2. If an indirect tax, it is a stamp tax on documents not required to be made under state law in order to render the sale valid, and Congress has no power to require a memorandum to be made of transactions within the state for the purpose of placing a stamp thereon.

3. If an indirect tax, it is not uniform, as required by the Constitution.

Opinion of United States Supreme Court.

1. The tax is not upon the property sold, nor the sale, nor the person making it, but "is in effect a duty or excise laid upon the privilege, or opportunity or facility offered at boards of trade" and is, therefore, not a direct tax.

2. The tax is not upon the memorandum, nor does Congress "assume to enact anything in opposition to the law of any state upon the subject of sales. It provides for a written memorandum containing the matters mentioned, simply as a means of identifying the sale, and for collecting the tax by means of the required stamp. * * * Congress might have required a sworn report with the proper amount of stamps

thereon to be made at certain regular intervals, of all sales made subject to the tax. * * * Whether the means adopted were the best and most convenient to accomplish that purpose was a question for the judgment of Congress and its decision must be conclusive in that respect."

3. In this case there is that uniformity which the Constitution requires. The tax or duty is uniform throughout the United States, and it is uniform or, in other words, equal, upon all who avail themselves of the privileges or facilities offered at the exchanges, and it is not necessary in order to be uniform that the tax should be levied upon all who make sales of the same kind of things, whether at an exchange or elsewhere."

The act is constitutional.

ALABAMA.

STATUTES.

LAWS OF 1883, PAGE 152.

§ 2. **Illegal Tolls, Freights, and Ferries.**—Unlawful pooling of freights. Any officer, agent, or servant of a person or corporation operating a railroad, who aids in making or carrying out an agreement between railroads, commonly called a pool, for the division between themselves of the freight-carrying business of any place in this state, whereby trade is restrained by the establishment of extortionate rates and the prevention of free competition, unless such agreement has been approved by the railroad commissioners, must, on conviction, be fined not less than fifty, nor more than two hundred dollars.

LAWS OF 1896-97, ACT 634.

AN ACT to more effectively protect the people against combinations, conspiracies and agreements between insurers whereby rates of insurance are raised or fixed. Whereas existing laws have proved inadequate to protect the people against combinations, conspiracies and agreements between insurers whereby rates of insurance are raised or fixed by such practices, therefore, in order to suppress such combinations, conspiracies and agreements to the end that competition in business shall alone make such rates.

§ 1. *Be it enacted by the general assembly of Alabama,* That every contract or policy of insurance made or issued after the passage of this act shall be construed to mean that in the event of loss or damage thereunder, the assured or beneficiary thereunder may, in addition to the actual loss or damage suffered, recover twenty-five per cent of the amount of such actual loss, any provision or stipulation in such contract or policy to the contrary notwithstanding; *Provided*, at the time of the making of such contract or policy of insurance, or subsequently before the time of trial the insurer belonged to, or was a member of, or in any way connected with, any tariff association or such like thing by

whatever name called or who had any agreement or had any understanding with any other person, corporation or association engaged in the business of insurance as agent or otherwise about any particular rate of premium which should be charged or fixed for any kind or class of insurance risk; *And provided further*, no stipulation or agreement in such contract or policy of insurance to arbitrate loss or damage nor to give notice or make proofs of loss or damage shall in any such case be binding on the assured or beneficiary, but right of action accrues immediately upon loss or damage.

§ 2. *Be it further enacted*, That if it is shown to the reasonable satisfaction of the jury by a preponderance of the weight of the testimony that such assurer at the time of the making of such agreement or policy of insurance or subsequently before the time of trial belonged to, or was a member of, in any way connected with any tariff association or such like thing by whatever name called, either in or out of this state, or had made any agreement or had any understanding either in or out of this state with any person, corporation or association engaged in the business of insurance as agent or otherwise about any particular rate of premium which should be charged or fixed for any risk of insurance on any person or property or on any kind or class of insurance risk, they must if they find for the assured or beneficiary in addition to his actual damages assess and add twenty-five per cent of the amount of such actual loss, and judgment shall be rendered accordingly.

§ 3. *Be it further enacted*, That this act shall be liberally construed to accomplish its object.

Approved February 18th, 1897.

ARKANSAS.

STATUTES.

LAWS OF 1897, ACT 46.

AN ACT to prevent combinations of trusts and corporations in the State of Arkansas.

Be it enacted by the General Assembly of the State of Arkansas,

§ 1. That from and after the passage of this act, all arrangements, contracts, agreements, trusts, or combinations, between persons or corporations, made with a view to lessen or which tend to lessen full and free competition in the importation or the sale of articles imported into this state, or in the manufacture or sale of articles of domestic growth, or of domestic raw material, and all arrangements, contracts, agreements, trusts or combinations, between persons or corporations designed, or which tend to advance, reduce or control the price, or the cost to the producer, or to the consumer of any such product or article, are hereby declared to be against public policy, unlawful and void.

§ 2. *Be it further enacted,* That any corporation chartered under the laws of this state, which shall violate the provisions of this act, shall thereby forfeit its charter and franchise, and its corporate existence shall thereupon cease and determine.

Every foreign corporation which shall violate the provisions of this act, is hereby denied the right to do, and is prohibited from doing business in this state. It is hereby made the duty of the attorney-general of this state to enforce this provision by due process of law.

§ 3. *Be it further enacted,* That any violation of this act shall be deemed, and is hereby declared, destructive of full and free competition, and a conspiracy against trade, and any person or persons who may engage in any such conspiracy, or shall as principal, manager, director, or agent, or in any other capacity, knowingly carry out any of the stipulations, purposes, prices, rates, or orders, made in furtherance

of such conspiracy, shall on conviction, be punished by any fine not less than five hundred dollars, nor more than two thousand dollars, and by imprisonment in the penitentiary not less than one, nor more than ten years, or in the judgment of the court, by either such fine or imprisonment.

§ 4. *Be it further enacted*, That the provisions of this act shall not apply to agricultural products, or live stock, while in the possession of the producer or raiser.

§ 5. *Be it further enacted*, That any person or persons, or corporation, that may be injured or damaged by any such arrangements, contracts, agreements, trusts, or combinations, described in section one of this act may sue for and recover in any court of competent jurisdiction in this state, of any person or persons, or corporations, operating such trusts, or combination, the full consideration or sum paid him or them for any goods, wares, merchandise or articles of sale of which is controlled by such combination or trust.

§ 6. *Be it further enacted*, That it shall be the duty of the judges of the circuit courts of this state to specially instruct the juries as to the provisions of this act.

§ 7. *Be it further enacted*, That all laws and parts of laws in conflict with the provisions of this act, be, and the same are hereby, repealed.

Approved March 16, 1897.

LAWS OF 1899, ACT 41.

AN ACT providing for the punishment of pools, trusts and conspiracies to control prices, and as to evidence and prosecution in such cases.

Be it enacted by the General Assembly of the State of Arkansas,

§ 1. Any corporation organized under the laws of this or any other state or country and transacting or conducting any kind of business in this state, or any partnership or individual, or other association or persons whatsoever, who shall create, enter into, become a member of, or a party to any pool, trust, agreement, combination, confederation or understanding with any other corporation, partnership, individual or any other person or association of persons, to regulate or fix the price of any article of manufacture, mechanism, merchandise, commodity, convenience, repair, any product of mining, or any article or thing whatsoever, or the price or

premium to be paid for insuring property against loss or damage by fire, lightning or storm, or to maintain said price when so regulated or fixed or shall enter into, become a member of or a party to any pool, agreement, contract, combination, association or confederation to fix or limit the amount or quantity of any article of manufacture, mechanism, merchandise, commodity, convenience, repair, any product of mining, or any article or thing whatsoever, or the price or premium to be paid for insuring property against loss or damage by fire, lightning, storm, cyclone, tornado or any other kind of policy issued by any corporation, partnership, individual or association of persons aforesaid, shall be deemed and adjudged guilty of a conspiracy to defraud, and be subject to the penalties as provided by this act.

§ 2. Any person, partnership, firm or association, or any representative or agent thereof, or any corporation or company, or any officer, representative or agent thereof, violating any of the provisions of this act shall forfeit not less than two hundred dollars, nor more than five thousand dollars for every such offense, and each day such person, corporation, partnership or association shall continue to do so shall be a separate offense, the penalty in such case to be recovered by an action in the name of the state at the relation of the attorney-general or prosecuting attorney; the moneys thus collected to go into the county school fund of the county in which the cause accrues, except as hereinafter provided.

§ 3. Any corporation created or organized by or under the laws of this state, which shall violate any of the provisions of the preceding sections of this act shall thereby forfeit its corporate rights and franchises; and its corporate existence shall, upon proper proof being made thereof in any court of competent jurisdiction in this state, be by the court declared forfeited, void and of non-effect, and shall thereupon cease and determine; and any corporation created or organized by or under the laws of any other state or country, which shall violate any provisions of the preceding sections of this act, shall thereby forfeit its right and privilege thereafter to do any business in this state, and upon proper proof being made thereof in any court of competent jurisdiction in this state, its right and privilege to do business in this state shall be declared forfeited; and in all proceedings to have such forfeiture declared, proof that any person who

has been acting as the agent of such foreign corporation in transacting its business in this state has been, while acting as such agent, and in the name, behalf, or interest of such foreign corporation, violating any provision of the preceding sections of this act, shall be received as prima facie proof of the act of the corporation itself; and it shall be the duty of the clerk of said court to certify the decree thereof to the secretary of state, and if it be an insurance company, also to the auditor of the state who shall take notice and be governed thereby as to the corporate powers and rights of said corporation.

§ 4. It shall be the duty of the secretary of state on or about the first day of July of each year, to address to the president, secretary or treasurer of each incorporated company doing business in this state, a letter of inquiry as to whether the said corporation, has all or any part of its business or interest in or with any trust, combination or association of persons or stockholders as named in the preceding provisions of this act, and to require an answer, under oath, of the president, secretary or treasurer, or any director of said company; a form of affidavit shall be enclosed in said letter of inquiry, as follows:

AFFIDAVIT.

STATE OF ARKANSAS, *County of* ———.

I, ———, do solemnly swear that I am the ——— (president, secretary, treasurer or director) of the corporation known and styled ——— duly incorporated under the laws of ——— on the ——— day of ——— 18—— and now transacting or conducting business in the state of Arkansas, and that I am duly authorized to represent said corporation in making this affidavit; and I do further solemnly swear that the said ——— known and styled as aforesaid, has not since the ——— day of ——— (naming the day upon which this act to take effect) created, entered into or become a member of or a party to, and was not, on the ——— day of ——— nor at any day since that date, and is not now, a member of or a party to, any pool, trust, agreement, combination, confederation or understanding with any other corporation, partnership, individual, or any other person or association of persons, to regulate or fix the price of any article of manufacture, mechanism, merchan-

dise, commodity, convenience, repair, any product of mining, or any article or thing whatsoever, or the price or premium to be paid for insuring property against loss or damage by fire, lightning, storm, cyclone, tornado or any other kind of policy issued by the parties aforesaid; and that it has not entered into or become a member of or a party to any pool, trust, agreement, contract, combination or confederation, to fix or limit the amount or quantity of any article of manufacture, mechanism, merchandise, commodity, convenience, repair, any product of mining, or any article or thing whatsoever, or the price or premium to be paid for insuring property against loss or damage by fire, lightning, storm, cyclone, tornado or any other kind of policy issued by the parties aforesaid; and that it has not issued, and does not own any trust certificates, and for any corporation, agent, officer or employe, or for the directors or stockholders of any corporation, has not entered into and is not now in any combination, contract, or agreement with any person or persons, corporation or corporations, or with any stockholder or director thereof, the purpose and effect of which said combination, contract, or agreement would be to place the management or control of such combination or combinations, or the manufactured products thereof, in the hands of any trustee or trustees, with the intent to limit, or fix the price or lessen the production and sale of any article of commerce, use or consumption, or to prevent, restrict or diminish the manufacture or output of any such article.

[President, Secretary, Treasurer or Director.]

Subscribed and sworn to before me, a _____ within
and for the county of _____ this _____ day of _____
18_____.

[SEAL.] _____.

And on refusal to make oath in answer to said inquiry, or on failure to do so, within thirty days from the mailing thereof, the secretary of state shall certify said fact to the prosecuting attorney of the county wherein said corporation is located, and it shall be the duty of such prosecuting attorney, at his earliest practicable moment, in the name of the state, and at the relation of said prosecuting attorney, to proceed against such corporation, if a domestic corporation, for the recovery of the money forfeit provided for in this

act, and also for the forfeiture of its charter or certificate of incorporation. If a foreign corporation, to proceed against such corporation for the recovery of the money forfeit provided for in this act, and to forfeit its right to do business in this state: *Provided*, That within thirty days after the passage of this act all foreign corporations desiring to do business in this state shall file a new bond, as the statute directs; and such sureties and bondsmen shall be liable for the penalties and forfeitures, including costs, provided for in this act.

§ 5. It shall be the duty of the attorney-general and the prosecuting attorney of each county, respectively, to enforce the provisions of this act. The attorney-general, the prosecuting attorneys, shall institute and conduct all suits begun in the circuit courts, and upon appeal the attorney-general shall prosecute said suits in the supreme court and courts of appeal. As compensation for his services in this behalf, the attorney-general shall be entitled to his actual expenses incurred in the prosecution of such suits, to be paid by the defendant or defendants when judgment is rendered for the state, to be taxed as costs by the court hearing the cause. The attorney-general and the prosecuting attorneys shall receive for their compensation one-fourth of the penalty collected, one-fourth of which shall go to the attorney-general, and three-fourths to the prosecuting attorney.

§ 6. In all suits instituted under this act to forfeit the charter of corporations, or to forfeit the right of a corporation to do business in this state, where a judgment of forfeiture is obtained, and the cause is not appealed to the supreme court, the circuit court rendering such judgment shall allow the prosecuting attorney a fee of not less than twenty-five dollars or more than two hundred and fifty dollars, to be paid out of the assets of said corporation; and when the attorney-general takes part in said prosecution, he shall be entitled to his actual expenses to be paid in like manner. All actions authorized and brought under this act shall have precedence, on motion of the prosecuting attorney or attorney-general, of all other business, civil and criminal, except criminal cases where the defendants are in jail.

§ 7. That all laws and parts of laws in conflict herewith are hereby repealed, and this act shall take effect and be in force from and after its passage.

Approved March 6, 1899.

CALIFORNIA.

COMMON-LAW DECISION.

The San Diego Water Co. v. The San Diego Flume Co.

108 Cal., 549.

August 26, 1895.

Statement.

Plaintiff and defendant made a contract whereby defendant was to supply no water in San Diego except through the pipes of the plaintiff, and agreed that it would supply water through plaintiff's pipes; plaintiff agreed to take the water and divide the profits with defendant. The plaintiff's and defendant's presidents were appointed trustees to manage the business of both companies.

By the laws of California the city government fixes the water rates.

Defendant now refuses to live up to the contract. Plaintiff brings suit to enforce it, and is met by the defense that the contract is illegal.

Opinion.

The contract was not void on the ground that it formed a partnership between the two corporations and was hence *ultra vires*. The agreement did not make the corporations partners, but merely made plaintiff the agent of the defendant.

The agreement was not against public policy, because the city fixes the water rate.

The contract is enforceable.

COLORADO.

CONSTITUTIONAL PROVISION.

ARTICLE 15.

§ 5. No railroad corporation, or the lessees or managers thereof, shall consolidate its stock, property or franchises with any other railroad corporation owning or having under its control a parallel or competing line.

[Adopted, March 14, 1876.]

CONNECTICUT.

CONSTITUTIONAL PROVISION.

ARTICLE FIRST.

§ 1. We declare, That all men when they form a social compact, are equal in rights; and that no man or set of men are entitled to exclusive public emoluments or privileges from the community.

[Adopted, September 15, 1818.]

CASES CONSTRUING CONSTITUTION.

The Norwich Gas Light Co. v. The Norwich City Gas Co.

25 Conn., 18.

March, 1856.

Statement.

Plaintiff is granted by the legislature the exclusive right to lay gas pipes in the streets of the city of Norwich, as against all except such persons as the legislature shall hereafter grant such power to. Defendant obtains no permission from the legislature to lay gas pipes in the streets, but gets it from the city council. Plaintiff prays that defendant be enjoined from laying its pipes.

Opinion.

The policy of the law is to encourage trade by free competition.

“The business of manufacturing and selling gas is an ordinary business * * * in respect to which the government has no exclusive prerogative. * * * As the restriction of other persons than the plaintiffs from using the streets for the purpose of distributing gas by means of pipes, can fairly be viewed as intended to operate as a restriction upon its free manufacture and sale, it comes directly within the definition and description of a monopoly. * * * The whole theory of a free government is opposed to such grants, and it does not require even the aid which may be derived”

- from the section of the constitution hereinbefore mentioned
“to render them void.”

The injunction is not granted.

The State v. Brennan's Liquors.

25 Conn., 277.

September, 1856.

Statement.

A law was passed prohibiting the sale of spirituous liquors by any person except a public agent. It was contended that this law is unconstitutional as it creates a monopoly.

Opinion.

“The object of the legislature in authorizing a sale by a public agent for certain purposes, was not to raise a revenue for the town, but to accommodate certain persons with spirits for particular uses, and at the same time to guard against the evils resulting from an indiscriminate sale by all persons and for all purposes.”

The law is held constitutional.

GEORGIA.

STATUTE.

LAWS OF 1896, PAGE 68.

AN ACT to declare unlawful and void all arrangements, contracts, agreements, trusts, or combinations made with a view to lessen, or which tend to lessen, free competition in the importation or sale of articles imported into this State, or in the manufacture or sale of articles of domestic growth or of domestic raw material; to declare unlawful and void all arrangements, contracts, agreements, trusts or combinations between persons or corporations, designed, or which tend to advance, reduce or control the price of such product or article to producer or consumer of any such product or article; to provide for forfeiture of the charter and franchise of any corporation organized under the laws of this State, violating any of the provisions of this Act; to prohibit every foreign corporation violating any of the provisions of this Act from doing business in this State; to require the Attorney-General of this State to institute legal proceedings against any such corporations violating the provisions of this Act, and to enforce the penalties prescribed; to prescribe penalties for any violation of this Act; to authorize any person or corporation damaged by any such trust, agreement or combination, to sue for the recovery of such damage, and for other purposes.

§ 1. *Be it enacted by the General Assembly of Georgia, and it is hereby enacted by the authority of the same, That,* from and after the passage of this Act, all arrangements, contracts, agreements, trusts or combinations between persons or corporations made with a view to lessen, or which tend to lessen, full and free competition in the importation or sale of articles imported into this State, or in the manufacture or sale of articles of domestic growth or of domestic raw material, and all arrangements, contracts, agreements, trusts or combinations between persons or corporations designed, or which tend to advance, reduce or control the price or the cost to the producer or to the consumer of any such product or article, are hereby declared to be against public policy, unlawful and void.

§ 2. *Be it further enacted by the authority aforesaid, That,* any corporation, chartered under the laws of this State,

which shall violate any of the provisions of this Act shall thereby forfeit its charter and its franchise, and its corporate existence shall thereupon cease and determine. Every foreign corporation, which shall violate any of the provisions of this Act, is hereby denied the right to do, and is prohibited from doing, business in this State. It is hereby made the duty of the Attorney-General of the State to enforce this provision by due process of law.

§ 3. *Be it further enacted by the authority aforesaid,* That any violation of the provisions of this Act shall be deemed, and is hereby declared to be destructive of full and free competition and a conspiracy against trade, and any person or persons who may engage in any such conspiracy, or who shall, as principal, manager, director or agent, or in any other capacity, knowingly carry out any of the stipulations, purposes, prices, rates or orders made in furtherance of such conspiracy, shall, on conviction, be punished by a fine of not less than one hundred dollars or more than five thousand dollars and by imprisonment in the penitentiary not less than one year nor more than ten years; or, in the judgment of the court, by either such fine or such imprisonment.

§ 4. *Be it further enacted by the authority aforesaid,* That the provisions of this Act shall not apply to agricultural products or live stock while in the possession of the producer or raiser.

§ 5. *Be it further enacted by the authority aforesaid,* That any person or persons, or corporations that may be injured or damaged by any such arrangement, contract, agreement, trust or combination, described in Section one of this Act, may sue for and recover, in any court of competent jurisdiction in this State, of any person, persons or corporation operating such trust or combination, the full consideration or sum paid by him or them for any goods, wares, merchandise or articles the sale of which is controlled by such combination or trust.

§ 6. *Be it further enacted by the authority aforesaid,* That it shall be the duty of the Judges of the Superior Courts of this State specially to instruct the grand juries as to the provisions of this Act.

§ 7. *Be it further enacted by the authority aforesaid,* That all laws and parts of laws in conflict with the provisions of this Act be, and the same are, hereby repealed.

Approved December 23, 1896.

IDAHO.

CONSTITUTIONAL PROVISION.

ARTICLE XI.

§ 18. No incorporated company, or any association of persons or stock company, in the State of Idaho, shall directly or indirectly combine or make any contract with any other incorporated company, foreign or domestic, through their stockholders or the trustees or assignees of such stockholders, or in any manner whatsoever, for the purpose of fixing the price or regulating the production of any article of commerce or of produce of the soil, or of consumption by the people; and that the legislature be required to pass laws for the enforcement thereof, by adequate penalties, to the extent, if necessary for that purpose, of the forfeiture of their property and franchise.

[Adopted, August 6, 1889.]

ILLINOIS.

STATUTES.

LAWS OF 1891, PAGE 206.

TRUSTS AND COMBINES.

POOLS, TRUSTS, AND COMBINES PROHIBITED.

AN ACT to provide for the punishment of persons, copartnerships, or corporations forming pools, trusts, and combines, and mode of procedure and rules of evidence in such cases.

§ 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly,*

If any corporation organized under the laws of this or any other State or country for transacting or conducting any kind of business in this State, or any partnership or individual or other association of persons whosoever, shall create, enter into, become a member of or a party to any pool, trust, agreement, combination, confederation or understanding with any other corporation, partnership, individual, or any other person or association of persons, to regulate or fix the price of any article of merchandise or commodity, or shall enter into, become a member of or party to any pool, agreement, contract, combination or confederation to fix or limit the amount or quantity of any article, commodity or merchandise to be manufactured, mined, produced or sold in this State, such corporation, partnership, or individual or other association of persons shall be deemed and adjudged guilty of a conspiracy to defraud and be subject to indictment and punishment as provided in this act: *Provided, however,* That in the mining, manufacture or production of articles of merchandise, the cost of which is mainly made up of wages, it shall not be unlawful for persons, firms or corporations doing business in this State to enter into joint arrangements of any sort, the principal object or effect of which is to maintain or increase wages.¹

¹ This section is given as amended by page 298 of the Laws of 1897.

§ 2. It shall not be lawful for any corporation to issue or to own trust certificates, or for any corporation, agent, officer or employes, or the directors or stockholders of any corporation, to enter into any combination, contract or agreement with any person or persons, corporation or corporations, or with any stockholder or director thereof, the purpose and effect of which combination, contract or agreement shall be to place the management or control of such combination or combinations, or the manufactured product thereof, in the hands of any trustee or trustees, with the intent to limit or fix the price, or lessen the production and sale of an article of commerce, use or consumption, or to prevent, restrict or diminish the manufacture or output of any such article.

§ 3. If a corporation or a company, firm or association shall be found guilty of a violation of this act, it shall be punished by a fine in any sum not less than five hundred dollars (\$500), nor more than two thousand dollars (\$2,000), for the first offense; and for the second offense not less than two thousand dollars (\$2,000), nor more than five thousand dollars (\$5,000); and for the third offense, not less than five thousand dollars (\$5,000) nor more than ten thousand dollars (\$10,000); and for every subsequent offense and conviction thereof, shall be liable to a fine of fifteen thousand dollars (\$15,000): *Provided*, That in all cases under this act either party shall have the right of trial by jury.

§ 4. Any president, manager, director or other officer or agent or receiver of any corporation, company, firm or association, or any member of any company, firm or association, or any individual found guilty of a violation of the first section of this act, may be punished by a fine of not less than two hundred dollars (\$200), nor to exceed one thousand dollars (\$1,000), or to be punished by confinement in the county jail not to exceed one year, or both, in the discretion of the court before which such conviction may be had.

§ 5. Any contract or agreement in violation of any provision of the preceding sections of this act shall be absolutely void.

§ 6. Any purchaser of any article or commodity from any individual, company or corporation transacting business contrary to any provision of the preceding sections of this act shall not be liable for the price or payment of such article or commodity, and may plead this act as a defense to any suit for such price or payment.

§ 7. The fines hereinbefore provided for may be recovered in an action of debt, in the name of the People of the State of Illinois. If, upon the trial of any cause instituted under this act to recover the penalties as provided for in section three, the jury shall find for the people, and that the defendant has been before convicted of a violation of the provisions of this act, they shall return such finding with their verdict, stating the number of times they find defendant so convicted, and shall assess and return with their verdict the amount of the fine to be imposed upon the defendant in accordance with said section three: *Provided*, That in all cases under the provisions of this act, a preponderance of evidence in favor of the people shall be sufficient to authorize a verdict and judgment for the people.

§ 7a. It shall be the duty of the secretary of state, on or about the first day of September of each year, to address to the president, secretary or treasurer of each incorporated company doing business in this state, whose postoffice address is known or may be ascertained, a letter of inquiry as to whether the said corporation has all or any part of its business or interest in or with any trust, combination or association of persons or stockholders, as named in the preceding provisions of this act, and to require answer, under oath, of the president, secretary or treasurer, or any director of said company. A form of affidavit shall be enclosed in said letter of inquiry as follows:¹

AFFIDAVIT.

STATE OF ILLINOIS, *County of* ———, ss:

I, ———, do solemnly swear that I am the (president, secretary, treasurer, or director) of the corporation known and styled ———, duly incorporated under the laws of ———, on the day of ———, 18—, and now transacting or conducting business in the State of Illinois, and that I am duly authorized to represent said corporation in the making of this affidavit; and I do further solemnly swear that the said ———, known and styled as aforesaid, has not, since the ——— day of ——— (naming the day upon which this act takes effect,) created, entered into or become a member of or a party to, and was not, on

¹ Sections 7a and 7b were added in 1893. Laws of 1893, page 89.

the ——— day of ———, nor at any day since that date, and is not now, a member of or a party to any pool, trust, agreement, combination, federation or understanding with any other corporation, partnership, individual or any other person or association of persons, to regulate or fix the price of any article of merchandise or commodities; and that it has not entered into or become a member of, or a party to any pool, trust, agreement, contract, combination or confederation to fix or limit the amount or quantity of any article, commodity or merchandise to be manufactured, mined, produced or sold in this State; and that it has not issued and does not own any trust certificates, and for any corporation agent, officer, or employe, or for the directors or stockholders of any corporation, has not entered into and is not now in any combination, contract, or agreement with any person or persons, corporation or corporations, or with any stockholder or director thereof, the purpose and effect of which said combination, contract or agreement would be to place the management or control of such combination or combinations, or the manufactured product thereof, in the hands of any trustee or trustees, with the intent to limit or fix the price or lessen the production and sales of any article of commerce, use or consumption, or to prevent, restrict or diminish the manufacture or output of any such article.

_____,
[President, Secretary, Treasurer or Director.]

Subscribed and sworn to before me, a ——— within and for the county of ———, this ——— day of ———, 18——.

[SEAL.] _____

And on refusal to make oath in answer to said inquiry, or on failure to do so within thirty days from the mailing thereof, the Secretary of State shall certify that fact to the Attorney-General, whose duty it shall be to direct the State's attorney of the county wherein such corporation or corporations are located, and it is hereby made the duty of the State's attorney, under the direction of the Attorney-General, at the earliest practicable moment, in the name of the people of the State of Illinois, and at the relation of the Attorney-General, to proceed against such corporation for the recovery of a penalty of fifty dollars for each day after such refusal

to make oath, or failure to make said oath, within thirty days from the mailing of said notice. Or the Attorney-General may, by any proper proceedings in a court of law or chancery, proceed, upon such failure or refusal, to forfeit such charter of such incorporated company or association incorporated under the general laws or by any special law of this State, and to revoke the rights of any foreign corporation located herein to do business in this State.

§ 7b. It shall be the duty of the Secretary of State, at any time, upon satisfactory evidence that any company or association of persons, duly incorporated under the laws of this or any other State, doing business in this State, has entered into any trust, combination or association in violation of the preceding section of this act, to demand that it shall make the affidavit, as above set forth in this act, as to the conduct of its business. In case of failure of compliance on the part of the corporation, then the same procedure shall ensue as provided in section 7a of this act: *Provided*, That no corporation, firm, association or individual shall be subject to any criminal prosecution by reason of anything truthfully disclosed by the affidavit required by this act, or truthfully disclosed in any testimony elicited in the execution thereof.

The Secretary of State is hereby authorized and required to charge and collect of each corporation a fee of one dollar for receiving and filing the affidavit herein provided for, to be accounted for as other fees received by him. To enable the Secretary of State to discharge additional duties devolving upon him in the execution of this act there is hereby appropriated out of any funds in the State treasury not otherwise appropriated, or so much thereof as may be necessary, the sum of six thousand dollars per annum, payable to the Secretary of State on his order upon proper vouchers as required by law: *Provided*, That corporations organized under the building, loan and homestead association laws of the State are excluded from the provisions of this act.

§ 8. It shall be the duty of the prosecuting attorneys in their respective jurisdictions, and the Attorney-General, to enforce the foregoing provisions of this act, and any prosecuting attorney of any county, securing a conviction under the provisions of this act, shall be entitled to such fee or salary as by law he is allowed for such prosecution. When there is a conviction under this act, the informer shall be en-

titled to one-fifth of the fine recovered, which shall be paid to him when the same is collected. All fines recovered under the provisions of this act shall be paid into the county treasury of the county in which the suit is tried, by the person collecting the same, in the manner now provided by law to be used for county purposes.

Approved June 11, 1891.

LAWS OF 1893, PAGE 182.

TRUSTS AND COMBINES.

AN ACT to define trusts and conspiracies against trade, declaring contracts in violation of the provisions of this act void, and making certain acts in violation thereof misdemeanors, and prescribing the punishment therefor and matters connected therewith

§ 1. *Be it enacted by the People of the State of Illinois, represented in General Assembly,* That a trust is a combination of capital, skill or acts by two or more persons, firms, corporations or associations of persons, or of two or more of them for either, any or all of the following purposes: First—To create or carry out restrictions in trade. Second—To limit or reduce the production, or increase or reduce the price of merchandise or commodities. Third—To prevent competition in manufacture, making, transportation, sale or purchase of merchandise, produce or commodities. Fourth—To fix at any standard or figure, whereby its price to the public shall be in any manner controlled or established, upon any article or commodity of merchandise, produce or manufacture intended for sale, use or consumption in this state; or to establish any pretended agency whereby the sale of any such article or commodity shall be covered up and made to appear to be for the original vendor, for a like purpose or purposes, and to enable such original vendor or manufacturer to control the wholesale or retail price of any such article or commodity after the title to such article or commodity shall have passed from such vendor or manufacturer. Fifth—To make or enter into, or examine or carry out any contract, obligation or agreement of any kind or description by which they shall bind or have bound themselves not to sell, dispose of, or transport any article or commodity, or article of trade, use, merchandise, commerce or consumption below a common standard figure, or card, or

list price, or by which they shall agree in any manner to keep the price of such article, commodity or transportation at a fixed or graduated figure, or by which they shall in any manner establish or settle the price of any article or commodity or transportation between them or themselves and others to preclude a free and unrestricted competition among themselves or others in the sale or transportation of any such article or commodity, or by which they shall agree to pool, combine or unite any interest they may have in connection with the sale or transportation of any such article or commodity that its price might in any manner be affected.

§ 2. That any corporation holding a charter under the laws of this state which shall violate any of the provisions of this act shall thereby forfeit its charter and franchise, and its corporate existence shall cease and determine.

§ 3. For a violation of any of the provisions of this act by any corporation mentioned herein it shall be the duty of the attorney-general or prosecuting attorney, upon his own motion, to institute suit or quo warranto proceedings at any county in this state in which such corporation exists, does business, or may have a domicile, for the forfeiture of its charter rights and franchise, and the dissolution of its corporate existence.

§ 4. Every foreign corporation violating any of the provisions of this act is hereby denied the right and prohibited from doing any business within this state, and it shall be the duty of the attorney-general to enforce this provision by injunction or other proper proceedings in any county in which such foreign corporation does business, in the name of the state on his relation.

§ 5. Any violation of either or all of the provisions of section one of this act shall be and is hereby declared to be a conspiracy against trade, and a misdemeanor; and any person who may be or may become engaged in any such conspiracy or take part therein or aid or advise in its commission, or who shall, as principal, manager, director, agent, servant, or employee, or in any other capacity knowingly carry out any of the stipulations, purposes, prices, rates, orders thereunder or in pursuance thereof shall be punished by fine not less than two thousand dollars nor more than five thousand dollars.

§ 6. In any indictment or information for any offense named in this act it is sufficient to state the purposes and

effects of the trust or combination, and that the accused was a member of, acted with or in pursuance of it, without giving its name or description, or how or where it was created.

§ 7. In prosecutions under this act it shall be sufficient to prove that a trust or combination as defined herein exists, and that the defendant belonged to it or acted for or in connection with it, without proving all the members belonging to it, or proving or producing any article of agreement or any written instrument on which it may have been based, or that it was evidenced by any written instrument at all.

§ 8. That any contract or agreement in violation of the provisions of this act shall be absolutely void and not enforceable either in law or equity.

§ 9. The provisions of this act shall not apply to agricultural products or live stock while in the hands of the producer or raiser.

§ 10. Any purchaser of any article or commodity, from any person, firm, corporation or association of persons, or of two or more of them, transacting business contrary to any provision of the preceding sections of this act shall not be liable for the price or payment of such article or commodity and may plead this act as a defense to any suit for such price or payment.

Approved June 20, 1893.

CASES CONSTRUING STATUTES.

Ford et al. v. Chicago Milk Shippers' Association.

155 Ill., 166.

1891.

STATUTE CONSTRUED.

§ 6. Any purchaser of any article or commodity from any individual, company or corporation transacting business contrary to any provision of the preceding sections of this act shall not be liable for the price or payment of such article or commodity, and may plead this act as a defense to any suit for such price or payment. (Laws of 1891, page 206.)

Statement.

Defendant is a corporation having for its object the control of the milk business in Chicago. It made an agreement with all its members whereby they were not to sell milk in Chicago for less than the prices fixed by defendant. The plaintiff contracted with defendant in April for milk to be furnished

during the following summer. The following July the trust law went into effect and after that, under the contract made in April, milk was furnished plaintiff by defendant. For this milk plaintiff refused to pay. Defendant sued and plaintiff pleaded in defense violation of the trust law.

Opinion.

An agreement between a corporation and its stockholders is essentially like an agreement between a corporation and strangers; therefore this combination was unlawful.

Plaintiff was not bound to pay defendant for the milk until it was supplied and the milk was not supplied until after the law was passed; therefore the law did not impair the obligation of any contract, and is constitutional.

Defendant can not recover for the milk supplied.

The Distilling and Cattle Feeding Co. v. The People ex rel. M. T. Moloney, Attorney-General.

156 Ill., 448.

June, 1895.

Statement.

A large number of manufacturers of distillery products combined, and placed their business in the hands of a board of trustees. The trustees later organized plaintiff corporation and managed it as its directors. The corporation was authorized by its charter to engage in the general distilling business in Illinois and elsewhere. The distillery property of its members was turned over to it, and it acquired control of substantially all the distillery business in this country. *Quo warranto* proceedings were instituted against it for abusing its franchise.

Opinion.

Held that the corporation was formed for an illegal purpose and that *quo warranto* proceedings were proper.

Levin v. Chicago Gas Light and Coke Co. et al.

64 Ill. App., 393.

1896.

Statement.

Defendants are six gas companies which formed a trust by putting their property into the hands of a trustee. Plaintiff, a stockholder at the time of consolidation, turned over his stock to the trustee and received for it a trust certificate. He now seeks to set aside this arrangement on the ground that it was *ultra vires*.

Opinion.

The equity court refused relief because plaintiff himself had broken the law against trusts and therefore is estopped from complaining.

The People ex rel. William W. McIlhany v. The Chicago Live Stock Exchange.

170 Ill., 556.

December, 1897.

Statement.

Defendant is a corporation formed for the purpose, as stated in its charter, of maintaining a commercial exchange; to promote uniformity in the customs of merchants; to settle disputes between its members; to facilitate the receiving and distributing live stock, and to guard against the sale of unhealthy meat. A by-law was adopted by the exchange that its members should be allowed to employ but a certain number of solicitors in each state; that no solicitors should be employed on commission, and that all solicitors should be members of the association. *Quo warranto* proceedings are sought to be instituted against the corporation to take away its charter, on the ground that it has gone beyond its corporate powers to the detriment of the public.

Opinion.

“By-laws of a corporation must always be reasonable, and for a corporate purpose, and always within its charter limits. They must always be subordinate to the constitution and general laws of the land. They must not infringe the policy of the state nor be hostile to public welfare. The by-law in this case is a restriction on trade and business. * * * It is not required for corporate purposes, nor is it included in the certificate of incorporation. It is therefore unlawful, as this corporation had no right to exercise this power of enacting it under its franchise.”

Quo warranto proceedings are held to be proper.

Harding et al. v. American Glucose Company et al.

55 N. E. Rep., 577.

October 19, 1899.

Statement.

In 1897 six competing companies in the manufacture of glucose and grape sugar made an arrangement whereby there was incorporated in New Jersey the Glucose Sugar Refining Company, to which the properties of the six companies were

deeded, and they agreed not to manufacture for a certain period any glucose in the corn belt, the only section in which the business could be carried on with profit. The American Glucose Company, a New Jersey corporation doing most of its business in Illinois, is one of the six mentioned, and plaintiffs are stockholders in this company. They file a bill to have the contract annulled as far as it affects their company. In defense defendants claim:

1. That as the company has not put its property in the hands of a trustee, but has sold it, the arrangement is legal.

2. That the agreement to go out of the business in the "corn belt" is only in partial restraint of trade and so is valid.

3. That the American Glucose Company, being a corporation of New Jersey, and the transaction in question being allowed by the laws of that State, the laws of Illinois do not apply to prevent it.

Opinion.

"Any combination of competing corporations for the purpose of controlling prices, or limiting production, or suppressing competition, is contrary to public policy and void. It makes no difference whether the combination is effected through the instrumentality of trustees and trust certificates, or whether it is effected by creating a new corporation, and conveying to it all the property of the competing corporations." "The bill in this case most certainly contains allegations in regard to the existence of a combination of capital, and acts by two or more persons and corporations, to prevent competition in the manufacture of glucose and grape sugar, and their products and by-products, and to create and carry out restrictions in trade; which allegations bring the transactions referred to in the bill within the scope and meaning of section 1 of the act of 1893."

2. As the agreement was not to enter the business within the only district in which it could be carried on with profit, it amounted to an agreement in total restraint of trade.

3. "The act of 1891 * * * applies to foreign corporations as well as to domestic; and the act of 1893 * * * by providing in section 4 that every foreign corporation, violating any provision of that act, shall be denied the right to do business within this state, impliedly requires the obedience of all foreign corporations doing business in this state to the provisions of that act."

"Citizens of Illinois can not evade the laws of Illinois passed against trusts and combines and defy the public policy of the state, by going into a foreign state, and chartering a corporation to do business in this state in violation of its laws. When these foreign corporations come into this state, to do business, they must conform to the laws and public policy of this state. Moreover the property transferred * * * consisted largely of real estate located in Illinois, and nothing is better settled than that the validity of all transactions relating to land depends upon the law of the state where the land is situated."

Decree setting aside the arrangement made by the American Glucose Company with the Glucose Sugar Refining Company.

COMMON-LAW DECISIONS.

Craft et al. v. McConoughy.

79 Ill., 346.

1875.

Statement.

A, B, C and D are competing grain dealers in Rochelle, Ill. They secretly agree to continue to appear as competitors, but to share each other's profits; and at secret meetings they plan the business of all four. D dies, and his son brings suit for accounting by the combination.

Opinion.

At common law, contracts in restraint of trade are void, being against public policy. Plaintiff can not compel the accounting.

The Chicago Gas Light and Coke Co. v. The People's Gas Light and Coke Co.

121 Ill., 530.

1887.

Statement.

Two gas companies had a right to supply gas anywhere in Chicago. They agreed that one company should supply all the gas to one part of the city and the other company all the gas to another part. One company is violating the contract; the other asks for an injunction.

Opinion.

The general rule is that contracts in partial restraint of trade are valid; but this does not apply to corporations conducting a public business. Any private contract by such

corporations which is injurious to the public interests is void.

The contract between plaintiff and defendant is void, and the injunction is refused.

The People ex rel. Francis B. Peabody v. The Chicago Gas Trust Co.

180 Ill., 268.

1889.

Statement.

Defendant's charter gives it permission to manufacture and sell gas in the city of Chicago and "to purchase and hold or sell the capital stock, or purchase or lease or operate the property, plant, good will, rights and franchises of any gas works or gas company or companies." Under this charter it purchased the majority of the shares in all the gas companies in Chicago.

Opinion.

Whatever tends to prevent competition between those engaged in an employment or business impressed with a public character, is opposed to public policy, and therefore unlawful; and whatever tends to create a monopoly is unlawful, as being contrary to public policy. All grants creating monopolies, and acts tending to prevent proper competition, are, by the common law, illegal and void.

The charter did not give defendant a right to create this monopoly, and all acts done to accomplish such monopoly are void.

INDIANA.

STATUTES.

LAWS OF 1897, CHAP. 104.

AN ACT to declare unlawful and void all arrangements, contracts, agreements, trusts, or combinations made with a view to lessen, or which tend to lessen, free competition in the importation or sale of articles imported into this State, or in the manufacture or sale of articles of domestic growth or of domestic raw material; to declare unlawful and void all arrangements, contracts, agreements, trusts, or combinations between persons or corporations designed, or which tend to advance, reduce or control the price of such product or article to producer or consumer of any such product or article; to provide for forfeiture of the charter and franchise of any corporation organized under the laws of this State, violating any of the provisions of this act, from doing business in this State; to require the Attorney-General of this State to institute legal proceedings against any such corporations violating the provisions of this act, and to enforce the penalties prescribed; to prescribe penalties for any violations of this act; to authorize any person or corporation, damaged by any such trust, agreement, or combination to sue for the recovery of such damage, and for other purposes.

§ 1. *Be it enacted by the General Assembly of the State of Indiana, and it is hereby enacted by the authority of the same,* That from and after the passage of this act, all arrangements, contracts, agreements, trusts, or combinations between persons or corporations who control the output of said (any) article of merchandise, made with a view to lessen, or which tend to lessen, full and free competition in the importation or sale of articles imported into this State, and all arrangements, contracts, agreements, trusts, or combinations between persons or corporations who control the output of said article of merchandise designed, or which tend to advance, reduce or control the price or the cost to the producer or to the consumer of any such product or article, are hereby declared to be against public policy, unlawful and void.

§ 2. That any corporation, chartered under the laws of this State, which shall violate any of the provisions of this act, shall thereby forfeit its charter and its franchise, and its corporate existence shall thereupon cease and determine. Every foreign corporation which shall violate any of the provisions of this act, is hereby denied the right to do, and is prohibited from doing business in this State. It is hereby made the duty of the Attorney-General of the State to enforce this provision by due process of law.

§ 3. That any violation of the provisions of this act shall be deemed, and is hereby declared to be destructive of full and free competition and a conspiracy against trade, and any person or persons who may engage in any such conspiracy, or who shall, as principal, manager, director or agent, or in any other capacity, knowingly carry out any of the stipulations, purposes, prices, rates or orders made in furtherance of such conspiracy, shall, on conviction, be punished by a fine of not less than one hundred dollars or more than five thousand dollars, and by imprisonment in the penitentiary not less than one year or more than ten years; or, in the judgment of the Court, by either such fine or such imprisonment.

§ 4. The persons designed by this act to be affected hereby are those who own, control or manufacture the output of any particular article or merchandise mentioned herein: *Provided, however,* That the provisions of this act shall not apply to agricultural products or live stock while in the possession of the producer or raiser.

§ 5. That any person or persons or corporations that may be injured or damaged by any such arrangement, contract, agreement, trust or combination, described in section 1 of this act, may sue for and recover in any court of competent jurisdiction, in this State, of any person, persons or corporation operating such trust or combination the full consideration or sum paid by him or them for any goods, wares, merchandise or articles, the sale of which is controlled by such combination or trust.

§ 6. That it shall be the duty of the Judges of the Circuit Courts of this State specially to instruct the Grand Juries as to the provisions of this act.

§ 7. That all laws and parts of laws in conflict with the provisions of this act be, and the same are, hereby repealed.

LAW OF 1899, CHAP. 148.

AN ACT to prohibit contracts or combinations of persons, firms or associations intended to prevent free competition in business, to provide for civil damages, penalties and punishments for violation, repealing all laws in conflict therewith.

§ 1. *Be it enacted by the General Assembly of the State of Indiana,* That any person, firm or association of persons who shall make any contract or enter into any agreement or make any combination or enter into any arrangement, directly or indirectly, to induce, procure or prevent any wholesale or retail dealer in or manufacturer of merchandise or of supplies or of material or article intended for trade or used by any mechanic, artisan or dealer in the prosecution of his business from selling such supplies to any dealer or to any mechanic or artisan; and that any dealer in or manufacturer of such supplies or material or article of trade or supplies or material to be used by any mechanic, artisan or dealer who shall be a party, directly or indirectly, to any such contract, combination or arrangement, or who shall upon the request of any party to any such contract, combination or arrangement refuse to sell such articles of trade, supplies or materials, or articles sold by any dealer or used by any mechanic, or artisan, to any such person or persons who may require them in the prosecution of their said business, for the reason that said dealer, mechanic or artisan is not a member of a combination or association of persons, shall be guilty of conspiracy against trade. And all such contracts, agreements, combinations or arrangements shall be void and of no effect whatever in law.

§ 2. Any person or persons, firm or association of individuals, or any individual connected therewith, who shall be responsible for the making of any such contract, agreement or combination or arrangement, or shall be a party to any such contract, combination or arrangement, or that shall take any part therein, as set out in section 1 of this act, shall, upon conviction thereof in any court of competent jurisdiction, be punished by a fine of not less than fifty dollars nor more than two thousand dollars, to which may be added imprisonment in the county jail for any period not exceeding one year.

§ 3. Each and every person, firm or association of persons who shall in any manner violate the provisions of this

act shall, for each and every day that such violation shall be committed and continued after due notice given by the party interested, [to the]¹ Attorney-General or prosecuting attorney, forfeit and pay the sum of fifty dollars, which may be recovered in the name of the State on the relation of the party injured or on the relation of the prosecuting attorney in any county where the offense is committed or where the offender or offenders reside. And it shall be the duty of the prosecuting attorney of any county to prosecute any such action, and he shall be entitled to a fee of twenty-five dollars to be taxed against the defendant, in the event of recovery, as a part of the costs of said action. Any such action may be taken in any circuit or superior court of the county in which the defendant resides or in which he is engaged in business.

§ 4. Any person who shall by any such contract or combination as set out in section 1 of this act, be injured or damaged in his business thereby, or by reason of anything forbidden or declared by this act to be unlawful, may maintain a suit therefor in any court having jurisdiction thereof in the county where the defendant resides or in which he is engaged in business, or in any county where service may be obtained, without respect to the amount in controversy, and the plaintiff in any such action shall be entitled to recover all his costs and a reasonable attorney's fee therein.

§ 5. Whenever it shall appear to the court before which any proceedings under this act may be pending, that the ends of justice require that other parties shall be brought before the court, said court may cause them to be made parties defendant and cause them to be served by the process of court as now required by law in such cases provided, whether they reside in the county where said action is pending or not.

§ 6. All laws and parts of laws in conflict with any of the provisions of this act are hereby repealed.

Approved March 3, 1899.

¹ This statute is taken verbatim from the official copies of the Indiana Laws of 1899; appended to which is the following: "Words included in the brackets [thus], do not appear in the Enrolled Acts * * *, but were by me inserted in the printed copies thereof, to aid in interpreting the meaning, * * *. Union B. Hunt, Secretary of State." The inserted words, "to the" may alter materially the meaning of the statute.

IOWA.
STATUTE.
CODE OF 1897.
CHEATING.

§ **5060. Pools and trusts.**—Any corporation organized under the laws of this or any other state or country for transacting or conducting any kind of business in this state, or any partnership, association or individual, creating, entering into or becoming a member of, or a party to any pool, trust, agreement, contract, combination, confederation or understanding with any other corporation, partnership, association or individual, to regulate or fix the price of any article of merchandise or commodity, or to fix or limit the amount or quantity of any article, commodity or merchandise to be manufactured, mined, produced or sold in this state, shall be guilty of a conspiracy.

§ **5061. Corporation not to enter.**—No corporation shall issue or own trust certificates, and no corporation, nor any agent, officer, or employe, director or stockholder of any corporation, shall enter into any combination, contract or agreement with any person or corporation, or with any stockholder or director thereof, for the purpose of placing the management or control of such combination or combinations, or the manufactured product thereof, in the hands of any trustee or trustees, with intent to limit or fix the price or lessen the production or sale of any article of commerce, use or consumption, or to prevent, restrict or diminish the manufacture or output of any such article.

§ **5062. Penalty.**—Any corporation, company, firm or association violating any of the provisions of the two preceding sections shall be fined not less than one per cent. of its capital or amount invested in such corporation, company, firm or association, nor more than twenty per cent. of the same and any president, manager, director, officer, agent or receiver of any corporation, company, firm or association, or any member of corporation, company, firm or association, or any individual, found guilty of a violation thereof shall be fined not

less than five hundred nor more than five thousand dollars, or be imprisoned in the county jail not to exceed one year, or both.

§ 5063. **Contracts void.**—All contracts or agreements in violation of any provisions of the three preceding sections of this act shall be void.

§ 5064. **Defense.**—Any purchaser of any article or commodity from any individual, company or corporation transacting business contrary to any provisions of the four preceding sections shall not be liable for the price or payment thereof, and may plead such provisions as a defense to any action for such price or payment.

§ 5065. **Forfeiture of charter.**—Any corporation created or organized by or under the laws of this state, which shall violate any provision of the five preceding sections, shall thereby forfeit its corporate right and franchise.

§ 5066. **Notice by secretary of state.**—The secretary of state, upon satisfactory evidence that any company or association of persons incorporated under the laws of this state have entered into any trust, combination or association in violation of the provisions of the six preceding sections, shall give notice to such corporation that, unless it withdraws from and severs all business connection with said trust, combination or association, its articles of incorporation will be revoked at the expiration of thirty days from date of such notice.

§ 5067. **Proceedings—Inquiry by grand jury.**—County attorneys, in their counties, and the attorney-general shall enforce the provisions of a public nature in the seven preceding sections, and any county attorney or the attorney-general securing a conviction under the provisions thereof shall be entitled, in addition to such fee or salary as by law he is allowed for such prosecution, to one-fifth of the fine recovered. When the attorney-general and county attorney act in conjunction in the prosecution of any action under such provisions, they shall be entitled to one-fourth of the fine recovered, which they shall divide equally between them, where there is no agreement to the contrary. It shall be the duty of the grand jury to inquire into and ascertain if there exist any pool, trust or combination within their respective counties.

Approved May 6, 1890.

Published May 14, 1890.

CASE CONSTRUING STATUTE.

Beechley v. Mulville et al.*102 Ia., 602.**70 N. W. Rep., 107.***Statute construed.**

McClain's "Code of Iowa," section 5454, declares that members of a combination "to regulate or fix the price of oil, lumber, coal, grain, flour, provisions or any other commodity or article whatever * * * shall be deemed to be guilty of a conspiracy to defraud."

Statement.

Several insurance companies and many agents agreed with each other to fix the price on risks in X. Plaintiff broke the agreement and was discharged by the companies he represented. The combination having caused his discharge, he sues it for damages.

Opinion.

By way of dictum it was held that insurance is a commodity and therefore a combination to fix prices of insurance comes within the statute.

The companies had a right to discharge plaintiff, as their contracts with him were at will, and expressly stated that they could at any time end the agency without giving cause.

Damages refused.

KANSAS.

STATUTES.

LAWS OF 1887, CHAP. 175.

TO PROHIBIT POOLING BY GRAIN AND STOCK DEALERS.

AN ACT to prohibit grain dealers, partnerships, companies, corporations or associations from combining or entering into any agreement or contract to pool or fix the price to be paid for grain, hogs, cattle, or stock of any kind whatever, and to provide punishment for violations of the same.

Be it enacted by the Legislature of the State of Kansas,

§ 1. That it shall be unlawful for any grain dealer or grain dealers, partnership, company, corporation or association of grain dealers, or any other person or persons, partnership, company, corporation or association, to enter into any agreement, contract or combination with any other grain dealer or grain dealers, partnership, company, corporation or association of grain dealers, or any other person or persons, partnership, company, corporation or association, for the pooling of prices of different and competing dealers and buyers, or to divide between them the aggregate or net proceeds of the earnings of such dealers and buyers, or any portion thereof, or for fixing the price which any grain dealer or dealers, partnerships, company, corporation or association of grain dealers, or any other person or persons, partnership, company, corporation or association, shall pay for grain, hogs, cattle or stock of any kind or nature whatever; and in case of any agreement, contract or combination for such pooling of prices of different and competing dealers and buyers, or to divide between them the aggregate or net proceeds of the earnings of such dealers and buyers, or any portion thereof, or for fixing the price which any grain dealer or grain dealers, partnership, company, corporation or association of grain dealers, or any other person or persons, partnership, company, corporation or association, shall pay for grain, hogs, cattle, or stock of any kind or nature whatever, each day of its continuance shall be deemed a separate offense.

§ 2. That in case any grain dealer or dealers, partnership, company, corporation or association of grain dealers, or any person or persons, partnership, company, corporation or association subject to the provisions of this act, shall do or cause to be done, or permit to be done, any act, matter or thing in this act prohibited or declared to be unlawful, or shall omit to do any act, matter or thing in this act required to be done, such grain dealer or grain dealers, partnership, company, corporation or association of grain dealers, or any other person or persons, partnership, company, corporation or association, shall be liable to the person or persons injured thereby, to the full amount of damages sustained in consequence of any such violation of the provisions of this act, together with a reasonable counsel or attorney's fee, to be fixed by the court in every case of recovery, which attorney's fee shall be taxed and collected as part of the costs in the case; and in any such action brought for the recovery of damages the court before whom the same shall be pending may compel any grain dealer or grain dealers, partnership, company, corporation or association of grain dealers, or any person or persons, partnership, company, corporation or association subject to the provisions of this act, or any director, officer, receiver, trustee, agent, employe, or clerk of them, or either of them, defendant in such suit, to attend, appear and testify in such case, and may compel the production of the books and papers of such grain dealer or grain dealers, partnership, company, corporation or association of grain dealers or any other person or persons, partnership, company, corporation or association party to such suit. The claim that any such testimony or evidence may tend to criminate the person giving such evidence shall not excuse such witness from testifying, but such evidence or testimony shall not be used against such person in the trial of any criminal proceeding.

§ 3. That any grain dealer or grain dealers, partnership, company, or corporation or association of grain dealers, or any other person or persons, partnership, company, corporation, or association subject to the provisions of this act, or any director, officer, or any receiver, trustee, clerk, or lessee or agent, or person acting for or employed by them, or either of them, who alone or with any other partnership, company, corporation, association, person or party, shall willfully do or cause to be done, or shall willfully suffer or permit to be

done any act, matter or thing in this act prohibited or declared to be unlawful, or who shall aid or abet therein, or shall willfully omit or fail to do any act, matter or thing in this act required to be done, or shall cause or willfully suffer or permit any act, matter or thing so directed or required by this act to be done, not to be so done, or shall aid or abet such omission or failure, or shall be guilty of any infraction of this act, or shall aid or abet therein, shall be deemed guilty of a misdemeanor, and shall upon conviction thereof be fined in any sum not exceeding one thousand dollars, or imprisonment in the jail of the county not exceeding six months, or both, in the discretion of the court; and shall moreover be liable to the suit of the party injured or damaged.

§ 4. This act shall take effect and be in force from and after its publication in the official paper.

Approved March 5, 1887.

Published in the official state paper March 17, 1887.

GENERAL STATUTES 1889.

AN ACT to declare unlawful trusts and combinations in restraint of trade and products, and to provide penalties therefor.

Be it enacted by the Legislature of the State of Kansas,

§ 359. **Trusts.**—That all arrangements, contracts, agreements, trusts or combinations between persons or corporations made with a view or which tend to prevent full and free competition in the importation, transportation or sale of articles imported into this state, or in the product, manufacture or sale of articles of domestic growth or product of domestic raw material or for the loan or use of money, or to fix attorneys or doctors' fees, and all arrangements, contracts, agreements, trusts or combinations between persons or corporations designed or which tend to advance, reduce or control the price or the cost to the producer or to the consumer of any such products or articles, or to control the cost or rate of insurance, or which tend to advance or control the rate of interest for the loan or use of money to the borrower, or any other services, are hereby declared to be against public policy, unlawful and void.

§ 360. **Corporations.**—It shall not be lawful for any corporation to issue or to own trust certificates, other than the regular and lawfully authorized stock thereof, or for any corporation, agent, officer or employes, or the directors or stockholders of any corporation, to enter into any combination,

contract or agreement with any person or persons, corporation or corporations, or with any stockholder or director thereof, the purpose and effect of which combination, contract or agreement shall be to place the management or control of such combination or combinations, or the manufactured product thereof, in the hands of any trustee or trustees, with the intent to limit and fix the price or lessen the production and sale of any article of commerce, use, or consumption, or to prevent, restrict or diminish the manufacture or output of any such article.

§ 361. That all persons entering into any such arrangement, contract, agreement, trust, or combination, or who shall, after the passage of this act, attempt to carry out or act under any such arrangement, contract, agreement, trust or combination described in sections one or two of this act, either on his own account or as agent or attorney for another, or as an officer, agent or stockholder in any corporation, or as a trustee, committee, or in any capacity whatever, shall be guilty of a misdemeanor, and on conviction thereof shall be subject to a fine of not less than one hundred dollars and not more than one thousand dollars, and to imprisonment not less than thirty days and not more than six months, or to both such fine and imprisonment, in the discretion of the court.

§ 362. **Persons injured.**—That any person or corporation injured or damaged by any such arrangement, contract, agreement, trust or combination described in sections one or two of this act, may sue for and recover in any court of competent jurisdiction in this state, of any person or corporation, the full consideration or sum paid by him for any goods, wares, merchandise and articles included in or advanced or controlled in price by said combination, or the full amount of money so borrowed.

§ 363. **Action; defense.**—That when an action at law or suit in equity shall be commenced in any court of this state, it shall be lawful in the defense thereof to plead in bar or in abatement that the plaintiff or any other person interested in the prosecution of the case is a member or agent of an unlawful combination as described in sections one or two of this act, or that the cause of action grows out of such combination, or out of some business or transaction thereof.

§ 364. **Violation.**—That the purchase, sale or manufacture of any goods, wares, merchandise or other commodities of this state of any person or corporation who has entered into

any such arrangements, contracts, agreements, trusts or combinations in any other state or territory, as described in sections one or two of this act, or the purchase, sale or manufacture of any such articles by any agent or attorney for such person, or as an agent, officer or stockbroker of any such corporation, as a trustee, committee, or in any capacity whatever, shall constitute a violation of this act, and shall subject the offender to the aforesaid liabilities and penalties.

§ 365. County attorney.—It shall be the duty of the county attorneys to diligently prosecute any and all persons violating any of the provisions of this act in their respective counties. If any county attorney shall fail, neglect or refuse to faithfully perform any duty imposed upon him by this act, he shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not less than one hundred dollars nor more than five hundred dollars, and be imprisoned in the county jail not less than ten nor more than ninety days; and such conviction shall operate as a forfeiture of his office, and the court before whom such conviction may be had shall order and adjudge such forfeiture of office, in addition to the fine imposed as herein provided. That whenever the county attorney shall be unable or shall neglect or refuse to enforce provisions of this act in his county, or for any reason whatever the provisions of this act shall not be enforced in any county, it shall be the duty of the attorney-general to enforce the same in such county, and for that purpose he may appoint as many assistants as he shall see fit, and he and his assistants shall be authorized to sign, verify and file all such complaints, opinions, petitions and papers, as the county attorney is authorized to sign, verify, or file, and to do and perform any act that the county attorney might lawfully do or perform; and for such services he or his assistants shall receive the same fee that the county attorney would be entitled to for like services, to be taxed and collected in the same manner.

§ 366. Sheriffs, duty of.—It shall be the duty of all sheriffs, deputy-sheriffs, constables, mayors, marshals, police judges and police officers of any city or town, having notice or knowledge of any violation of the provisions of this act, to notify the county attorney of the fact of such violation, and to furnish him the names of any witness within his knowledge by whom such violation can be proven. If any such officer

shall fail to comply with the provisions of this section he shall upon conviction, be fined in any sum not less than one hundred dollars nor more than five hundred dollars; and such conviction shall be a forfeiture of the office held by such person, and the court before whom such conviction is had shall, in addition to the imposition of the fine aforesaid, order and adjudge the forfeiture of his said office.

§ 367. **District courts, duty of.**—It shall be the duty of the district courts to instruct the grand juries especially as to the provisions of this act.

All laws or parts of laws in conflict with the provisions of this act are hereby repealed. This act shall take effect and be enforced from and after its publication in the official state paper.

Approved March 2, 1889. Published March 9, 1899.

[Laws of 1889, Chapter 257.]

LAWS OF 1897, CHAP. 265.

PROHIBITING TRUSTS.

AN ACT defining and prohibiting trusts, providing procedure to enforce the provisions of this act, and providing penalties for violations of the provisions of this act.

Be it enacted by the Legislature of the State of Kansas,

§ 1. A trust is a combination of capital, skill, or acts, by two or more persons, firms, corporations, or association of persons, or either two or more of them, for either, any or all of the following purposes: *First.*—To create or carry out restrictions in trade or commerce or aids to commerce, or to carry out restrictions in the full and free pursuit of any business authorized or permitted by the laws of this state. *Second.*—To increase or reduce the price of merchandise, produce or commodities, or to control the cost or rates of insurance. *Third.*—To prevent competition in the manufacture, making, transportation, sale or purchase of merchandise, produce or commodities, or to prevent competition in aids to commerce. *Fourth.*—To fix any standard or figure, whereby its price to the public shall be, in any manner, controlled or established, any article or commodity of merchandise, produce or commerce intended for sale, use or consumption in this state. *Fifth.*—To make or enter into, or execute or carry out, any contract, obligation or agreement

of any kind or description by which they shall bind or have to bind themselves not to sell, manufacture, dispose of or transport any article or commodity, or article of trade, use, merchandise, commerce or consumption below a common standard figure or by which they shall agree in any manner to keep the price of such article, commodity or transportation at a fixed or graded figure, or by which they shall in any manner establish or settle the price of any article or commodity or transportation between them or themselves and others, to preclude a free and unrestricted competition among themselves or others in transportation, sale or manufacture of any such article or commodity, or by which they shall agree to pool, combine or unite any interest they may have in connection with the manufacture, sale or transportation of any such article or commodity, that its price may in any manner be affected. And any such combinations are hereby declared to be against public policy, unlawful and void.

§ 2. All persons, companies, or corporations, within this state are hereby denied the right to form or to be in any manner interested, either directly or indirectly, as principal, agent, representative, consignee or otherwise in any trust as defined in section one of this act.

§ 3. Any corporation, holding a charter under the laws of the state of Kansas which shall violate any of the provisions of this act shall thereby forfeit its charter and franchise, and its corporate existence shall cease and determine. And any stockholder, director, officer, agent, representative or consignee of any such corporations shall be subject to the penalties herein prescribed.

§ 4. For a violation of any of the provisions of this act by any corporation, or any of its officers or agents mentioned herein, it shall be the duty of the attorney-general of the state, or county attorney of any county in which said violation may occur, or either of them, upon his own motion, to institute an action in any court in this state having jurisdiction thereof, for the forfeiture of the charter, rights and franchise of such corporation, and the dissolution of its corporate existence.

§ 5. Every person, company or corporation within or without this state, their officers, agents, representatives or consignees, violating any of the provisions of this act, within this state, are hereby denied the right, and are hereby prohibited from doing any business within this state, and all

persons, companies and corporations, their officers, agents, representatives and consignees within this state are hereby denied the right to handle the goods of, or in any manner deal with, directly or indirectly, any such person, company or corporation, their officers, agents, representatives or consignees, and it shall be the duty of the attorney-general, and the county attorney of any county in the state where any violation of this act be committed, or either of them, to enforce the provisions of this section by injunction or other proceeding; and all persons, companies and corporations, their officers, agents, representatives or consignees, violating any of the provisions of this section, either directly or indirectly, or of abetting or aiding either directly or indirectly in any violation of any provisions of this section, shall be deemed guilty of a misdemeanor and shall be fined, not less than one hundred dollars nor more than one thousand dollars, and confined in jail not less than thirty days, nor more than six months, and shall forfeit not less than one hundred dollars for each and every day such violation may continue, which may be recovered in the name of the state of Kansas in any court of competent jurisdiction.

§ 6. Each and every person, company or corporation, their officers, agents, representatives or consignees, who, either directly or indirectly, violate any of the provisions of this act shall be deemed guilty of a misdemeanor and on conviction thereof shall be subject to a fine of not less than one hundred dollars nor more than one thousand dollars, and shall be imprisoned not less than thirty days nor more than six months, and in addition thereto for each and every day thereafter that such violation shall be committed or continued, forfeit and pay the sum of one hundred dollars which may be recovered in the name of the state of Kansas, in any county where the offense is committed or where either of the offenders reside, and it shall be the duty of the attorney-general of the state, or the county attorney of any county in the state, in which said violation shall occur, or either of them, to prosecute and enforce the provisions of this act.

§ 7. Any contract or agreement in violation of any of the provisions of this act, shall be absolutely void and not enforceable in any of the courts of this state, and when any civil action shall be commenced in any court of this state, it shall be lawful to plead in the defense thereof, that the plaintiff or any other person interested in the prosecution of the

case is at the time or has within one year next preceding the date of the commencement of any such action, been guilty either as principal, agent, representative, or consignee, directly or indirectly, of a violation of any of the provisions of this act, or that the cause of action grows out of any business transaction in violation of this act.

§ 8. That any person, firm, company or corporation that may be damaged by any such agreement, trusts or combinations described in sections one and two of this act, may sue for and recover in any court of competent jurisdiction in this state, of any person, company, or corporation, operating such trust or combination, such damages as they have sustained, together with a reasonable attorney fee.

§ 9. It shall be the duty of the attorney-general of the state, and the county attorneys in their respective counties to diligently prosecute any and all persons violating any of the provisions of this act, and it shall be the duty of all state and county officials having notice and knowledge of any violation of the provisions of this act, to notify the county attorney of their respective counties, and the attorney-general of the state, of the fact of such violation and to furnish them with the names of any witnesses by whom such violations can be proved; if any such officer or officers shall fail to comply with the provisions of this section he shall upon conviction, be fined in any sum not less than one hundred dollars nor more than one thousand dollars, and such conviction shall be a forfeiture of the office held by such person, and the court before whom such conviction is had, shall in addition to the imposition of the fine aforesaid, order and adjudge the forfeiture of his said office.

§ 10. The several district courts of this state, and the judges thereof shall have jurisdiction, and it shall be their duty, upon good cause shown and upon written application of the county attorney or the attorney-general, to cause to be issued by the clerk of said court, subpoenas for such witnesses as may be named in the application of a county attorney or the attorney-general, and to cause the same to be served by the sheriff of the county where such subpoena is issued; and such witnesses shall be compelled to appear before such court, or judge, at the time and place set forth in the subpoena, and shall be compelled to testify as to any knowledge they may have of the violations of any of the pro-

visions of this act. And any witness who fails or refuses to attend and testify shall be punished as for contempt, as provided by law. Any person subpoenaed and examined shall not be liable to criminal prosecution for any violation of this act about which he may testify. Neither shall the evidence of any such witness be used against him in any criminal proceeding. The evidence of all witnesses so subpoenaed shall be taken down by the reporter of said court and shall be transcribed and placed in the hands of the county attorney or the attorney-general, and he shall, in the proper courts, at once prosecute such violator or violators of this act as the testimony so taken shall disclose. Witnesses subpoenaed as provided for in this section shall be compelled to attend from any county in the state.

§ 11. Nothing in this chapter shall be held or construed to affect any action or prosecution which is now pending under the provisions of any law now in existence in this state.

§ 12. This act shall take effect and be in force from and after its publication in the official state paper.

Approved March 8, 1897.

Published in official state paper March 12, 1897.

LAWS OF 1899, CHAP. 293.

CERTAIN COMBINATIONS PROHIBITED.

AN ACT to prohibit combination in restraint of trade, declaring such combinations unlawful, and prescribing penalties for the violation of this act.

Be it enacted by the Legislature of the State of Kansas:

§ 1. If any person, company or corporation doing business in Kansas shall make any agreement, expressed or implied, or by any understanding or combination with any person, company or corporation within or without the state, by which any shipper of seeds, grains, hay or live stock is defrauded out of any portion of the net weight of any consignment of grain, seeds, hay, or live stock, all such agreements or combinations are hereby declared to be in restraint of trade, and any such person, company or corporation shall be deemed guilty of a misdemeanor, and upon conviction shall be fined in the sum of not less than one hundred dollars and not exceeding one thousand dollars for each offense.

§ 2. Every person, servant, agent or employee of any firm

or corporation doing business within the state of Kansas that shall conspire or combine with any other persons, firm or corporation within or without the state for the purpose of monopolizing any line of business, or shall conspire or combine for the purpose of preventing the producer of grain, seeds or live stock or hay, or the local buyer thereof, from shipping or marketing the same without the agency of any third person, firm or corporation, shall be deemed guilty of a misdemeanor, and on conviction shall be fined in a sum not less than one thousand dollars and not to exceed five thousand dollars for each offense.

§ 3. Any person who shall, as agent or employee of any person, firm or corporation, enter into an agreement, expressed or implied, by which it is stipulated that grain, seeds or hay shall not be shipped by the producer or local buyer unless accompanied with warehouse receipts, or that the same shall in any manner be under the control of any warehouseman or agent as a condition precedent to the marketing of said grain, all such agreements shall be deemed, and are hereby declared, unlawful, and in restraint of trade, and the person entering into such agreement or combination shall be deemed guilty of a misdemeanor, and upon conviction shall be fined in a sum not less than one thousand dollars and not more than five thousand dollars, or by imprisonment in the county jail not less than ninety days and not to exceed one year, or by both such fine and imprisonment, at the discretion of the court.

§ 4. The several district courts and the supreme court of the state of Kansas are hereby vested with jurisdiction to prevent and restrain violators of this act, and it shall be the duty of the attorney-general to enforce the provisions of this act, and such proceedings may be instituted by petition, setting forth the cause of complaint, praying relief, verifying said petition by affidavit, and the court shall grant temporary restraining orders enjoining or prohibiting such violation till the final hearing of the case; said restraining order shall be granted without bond.

§ 5. Any person, firm or corporation that shall be injured in business or property by any other person, firm or corporation by reason of anything declared unlawful or in restraint of trade by this act shall have a right of action against the person, firm or corporation violating the provi-

sions of this act for threefold damages, including costs and reasonable attorney's fees.

§ 6. This act shall take effect and be in force from and after its publication in the official state paper.

Approved March 4, 1899.

Published in official state paper April 4, 1899.

CASE CONSTRUING STATUTE.

The State of Kansas v. Wm. C. Phipps et al.

50 Kans., 609.

January, 1893.

Statute construed.

The Kansas anti-trust law of 1889, provides that a combination to control the cost of insurance shall be illegal, and that any person connected with it, either on his own account or as agent, shall be guilty of a misdemeanor.

Statement.

Defendants were agents of a combination of insurance companies to keep up the premiums on insurance. Being arrested, they claimed that, inasmuch as the companies they represented were out of the state, they were engaged in interstate commerce and were, therefore, not governed by state laws.

Opinion.

Held that insurance is not interstate commerce when conducted within the state by companies organized without the state.

Defendants were each fined \$100 and costs.

KENTUCKY.

CONSTITUTIONAL PROVISION.

§ 198. It shall be the duty of the General Assembly from time to time, as necessity may require, to enact such laws as may be necessary to prevent all trusts, pools, combinations or other organizations, from combining to depreciate below its real value any article, or to enhance the cost of any article above its real value.

[Adopted, September 28, 1891.]

STATUTE.

KENTUCKY STATUTES, CHAP. 101.

POOLS—TRUSTS—CONSPIRACIES.

§ 3915. **Defined and prohibited.**—That if any corporation under the laws of Kentucky, or under the laws of any other state or country, for transacting or conducting any kind of business in this state, or any partnership, company, firm or individual, or other association of persons, shall create, establish, organize or enter into, or become a member of, or a party to, or in any way interested in any pool, trust, combine, agreement, confederation or understanding with any other corporation, partnership, individual or person, or association of persons, for the purpose of regulating or controlling or fixing the price of any merchandise, manufactured articles or property of any kind, or shall enter into, become a member of, or party to, or in any way interested in any pool, agreement, contract, understanding, combination or confederation, having for its object the fixing, or in any way limiting the amount or quantity of any article of property, commodity or merchandise to be produced or manufactured, mined, bought or sold, shall be deemed guilty of the crime of conspiracy, and punished therefor as provided in the subsequent sections of this act.

§ 3916. **Trust certificates ; when sale of unlawful.**—It shall not be lawful for any corporation to issue or to own, have or sell any trust certificates or stocks, or for any corporation's agent, officer or employe, agent or director, or

any corporation to enter into, either verbally or in writing, any combination, contract, agreement or understanding with any person or persons, corporation or corporations, or with any director, agent or officer thereof, the purpose or effect of which combination, contract, agreement or understanding would be to place the management, control or any part of the business of such combination or association, of the manufactured product thereof, in the hands or under the control, in the whole or in part, of any trustee or trustees, or agents, or any person whatever, with the intent, or to have the effect to limit, fix, establish or change the price of the production or sale of any article of property or of commerce, or to prevent, restrict, or in any way diminish the manufacture or output of any such article or property.

§ 3917. Penalties imposed on corporations and officers.—If any corporation, company, firm, partnership or person, or association of persons, shall, by court of competent jurisdiction, be found guilty of any violation of any of the provisions of this act, such guilty party shall be punished by a fine of not less than five hundred dollars, and not more than five thousand dollars. Any president, manager, director or other officer or agent, or receiver of any corporation, company, firm, partnership or any corporation, company, firm or association, or member of any corporation, firm or association, or any member of any company, firm or other association, or any individual found, by a court of competent jurisdiction, guilty of any violation of this act shall be punished by a fine of not less than five hundred dollars nor more than five thousand dollars, or may be imprisoned in the county jail not less than six months nor more than twelve months, or may be both so fined and imprisoned in the discretion of the court or jury trying the case.

§ 3918. Contract in violation of law void.—Any contract or agreement or understanding in violation of the provisions of the preceding sections of this act shall be null and void; and any purchasers of property or article, or of any commodity, from any individual, firm, company or corporation transacting business contrary to the preceding sections of this act, shall not be liable for the price or payment of such article or commodity or property, and may plead and rely on this act as a complete defense to any suit for such price or payment.

§ 3919. **Charter of corporation forfeited upon conviction.**—If any corporation created or organized by or under the laws of this state shall be indicted and convicted for any violation of any of the provisions of this act, such indictment, trial and conviction in any court of competent jurisdiction shall have the effect to forfeit the charter of such corporation without any further proceedings on the subject of the forfeiture of its charter; but any corporation whose charter is so forfeited shall have the right of appeal as is provided in other cases, and the filing of the bond as is required by law shall suspend the judgment of forfeiture until same is passed upon by the court to which the case is appealed.

§ 3920. **Judges to charge grand jury concerning.**—It shall be the duty of the circuit judges, and other judges of similar jurisdiction in this state, to give the provisions of this act in charge to the grand juries at each term of their courts.

§ 3921. **Appeals; how regulated.**—The provisions of the code of practice regulating appeals in other cases shall apply to appeals under this act.

[Passed May 20, 1890.]

CASE CONSTRUING STATUTE.

Brewster v. Miller et al.

41 S. W. Rep., 301.

June 4, 1897.

Statement.

Defendants are undertakers, members of the "Funeral Directors' Association" of Louisville. Said association fixes certain prices in the business, and provides that no member shall be employed by, or sell articles to, any person owing a member of the association. Plaintiff wished defendants to bury his wife. Claiming that plaintiff owed a member, they all refused. Plaintiff sues for damages.

Opinion.

This being a civil suit, the court refuses to say whether or not defendants would be liable in a criminal action.

One has no right of action against a merchant who refuses to sell him goods, therefore defendants were justified in refusing to contract with plaintiff.

Damages refused.

COMMON-LAW DECISION.

Anderson v. Jett, etc.*89 Ky., 375.**December 12, 1889.***Statement.**

Defendant and plaintiff owned two boats which were rivals in trade. To avoid competition an agreement was entered into that the net income from the boats should be divided between the owners; and that if one should go out of business he should give the other notice and should not engage in the business again within a year. Defendant did go out of business and has now within a year commenced again. Plaintiff brings suit on the contract.

Opinion.

Competition is the life of trade, and a contract in restraint of trade, regardless of its actual result, is against public policy and is void.

Plaintiff cannot recover.

LOUISIANA.

STATUTES.

LAWS OF 1890, ACT 86.

AN ACT to protect trade and commerce against unlawful restraints and monopolies and to provide penalties for the violation of this act.

§ 1. *Be it enacted by the General Assembly of the State of Louisiana,* That every contract, combination in the form of trust, or conspiracy, in restraint of trade or commerce or to fix or limit the amount or quantity of any article, commodity or merchandise to be manufactured, mined, produced or sold in this State is hereby declared illegal.

§ 2. *Be it further enacted, etc.,* That every person who shall make any such contract, or engage in any such combination, or conspiracy, shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be punished by a fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both of said punishments, in the discretion of the court.

§ 3. *Be it further enacted, etc.,* That every person who shall monopolize or attempt to monopolize, or combine, or conspire with any other person or persons, to monopolize any part of the trade or commerce within the limits of this State, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments in the discretion of the court.

§ 4. *Be it further enacted, etc.,* That this act shall take effect from and after its passage and promulgation.

Approved July 5, 1890.

LAWS OF 1892, ACT 90.

AN ACT to prevent trusts or combinations intended to restrain trade or to control the market value of merchandise, produce or commodities and to provide for penalties and punishment of persons, corporations, firms and associations of persons connected with them, and to promote free competition in the state of Louisiana.

§ 1. *Be it enacted by the General Assembly of the state of Louisiana;* That after the passage of this act it shall

be unlawful for any individual, firm, company, corporation or association to enter into, continue or maintain any combination, agreement or arrangement of any kind, expressed or implied, with any other individual, firm, company, association or corporation for any of the following purposes: First; to create or carry out restrictions in trade. Second; to limit or reduce the production, or increase or reduce the price of merchandise, produce or commodities. Third; to prevent competition in manufacture, making, transportation, sale or purchase of merchandise, produce or commodities. Fourth; to fix at any standard or figure, whereby its price shall be in any manner controlled or established, any article of merchandise, produce, commodity or commerce intended for consumption in this state. Fifth; to make or enter into or execute or carry out any contract, obligation or agreement of any kind or description by which they shall bind or have bound themselves not to sell, dispose of, or transport any article or commodity or article of trade, use, merchandise, commerce, or consumption below a common standard figure, or by which they shall agree in any manner to keep the price of such article, at a fixed or graduated figure, or by which they shall in any manner establish or settle the price of any article or commodity or transportation between them or themselves and others to preclude a free and unrestricted competition among themselves, or others, in the sale or transportation of any such article or commodity, or by which they shall agree to pool, combine, or unite any interest they may have in connection with the sale or transportation of any such article or commodity that its price might in any manner be affected.

§ 2. *Be it further enacted, etc.*, That any corporation holding a charter under the laws of the state of Louisiana, which shall be convicted of a violation of the provisions of this act shall thereby forfeit its rights and franchises, and its corporate existence shall cease and determine, and it shall be the duty of the attorney-general of his own motion and without leave or orders of any court or judge, to institute an action in the name of the state of Louisiana for the forfeiture of such rights and franchises and the dissolution of such corporate existence.

§ 3. *Be it further enacted, etc.*, That every foreign corporation, or any corporation organized under or pursuant to the laws of any state, who shall be convicted of a violation of the provisions of this act is hereby denied the right and

prohibited from doing any business within this state, and it shall be the duty of the attorney-general to enforce this provision by injunction or other proceedings in the name of the state of Louisiana.

§ 4. *Be it further enacted, etc.*, That any violation of either or all the provisions of this act shall be and is hereby declared a conspiracy against trade, and any person who may be or may become engaged in any such conspiracy or take part therein, or aid or advise in its commission, or who shall as principal, manager, director or agent, knowingly carry out any of the stipulations, purposes, prices, rates, or orders thereunder or in pursuance thereof, shall be punished by fine not less than one hundred dollars nor more than one thousand dollars, and by imprisonment in the penitentiary not less than six months nor more than one year or by either such fine and imprisonment in the discretion of the court. It shall be the duty of the district attorneys in their respective jurisdictions and the attorney-general to enforce this provision and any district attorney of any parish securing a conviction under this provision shall be entitled to such fee or salary as by law he is allowed for such prosecution.

§ 5. *Be it further enacted, etc.*, That in any indictment for an offense named in this act it is sufficient to state the purposes or effects of the trust or combination and that the accused was a member of, acted with or in pursuance of it, without giving its name or description, or how, when or where it was erected, *Provided*, That no contract or agreement or arrangement which does not include, or which cannot be held to include a stipulation between the parties to share in the profits of any such contract, agreement or arrangement, or which contract, agreement or arrangement does not provide for or does not contemplate a profit or pool to be divided between the parties to such contract, agreement or arrangement, shall be held or construed to be in violation of the provision of this act.

§ 6. *Be it further enacted, etc.*, That in prosecutions under this act, it shall not be necessary to prove who constitute all the members belonging to the trust or combination.

§ 7. *Be it further enacted, etc.*, That any contract or agreement in violation of the provisions of this act, shall be absolutely void.

§ 8. *Be it further enacted, etc.*, That the provisions of this act shall not apply to agricultural products or live stock

while in the hands of the producer or raiser; nor be so construed as to affect any combination or confederation of laborers for the purpose of procuring an increase of their wages or redress of grievances.

§ 9. *Be it further enacted, etc.*, That this act shall take effect from and after its passage and that all laws and parts of laws conflicting with same are hereby repealed.

Approved July 7, 1892.

LAWS OF 1894, ACT 176.

AN ACT to declare it illegal for any corporation, or corporations, firms or individuals to issue certificates to be known as rebate certificates or any evidence of indebtedness, the contract upon which said certificates are based being to control the business of the party or parties thereto.

§ 1. *Be it enacted by the general assembly of the state of Louisiana;* It shall be illegal for any corporation or corporations, firms or individuals to issue certificates to be known as rebate certificates or any evidence of indebtedness, the contract upon which said certificates are based, being to control the business of the party or parties thereto.

§ 2. *Be it further enacted, etc.*, That it shall be and is hereby declared illegal to impose as a condition that said certificates or evidences of indebtedness shall be binding only in event said original party to whom the same were issued, shall make all purchases from the firm or firms, corporation or corporations, individual or individuals, issuing same or connected in any manner with the firm or firms, corporations or individuals issuing same.

§ 3. *Be it further enacted, etc.*, That said firm or firms, corporation or corporations, cannot urge as a defence to any certificates issued, that their liabilities thereon are based upon the exclusive trade of the party to the contract.

Approved July 12, 1894.

COMMON-LAW DECISIONS.

The Texas and Pacific Ry. Co. et al. v. the Southern Pacific Ry. Co.

41 La. Ann., 970.

December, 1889.

Statement.

Two systems of railroads, one controlled by Jay Gould, and the other by Collis P. Huntington, were competitors in carrying freight between certain points. The companies made an

agreement whereby the income from business between these points should all be pooled. According to this arrangement defendant has about half a million dollars which is due plaintiff. Defendant claims that the contract was void, and refuses to pay. Plaintiff brings suit.

Opinion.

Railroads are *quasi* public agencies, and they have no right to make contracts which tend to injure the public. A contract to pool the income from competing systems is an injury to the public, and it is therefore void.

The court refuses relief in the following words:

“On ascertaining the building is infested with the disease of illegality, the judge simply refuses to enter its portals, and retires without incurring contact with any of its inmates, and without attempting to examine into, or to rectify, any rights or wrongs which may exist between the inmates of the polluted household. He leaves them quietly where they have placed themselves, and he turns a deaf ear to any equities which one of the parties may invoke against the other.”

John Trisconi v. J. M. Winship et al.

43 La. Ann., 45.

* January, 1891.

Statement.

Plaintiff was a stockholder in the Bienville Oil Works. The directors allowed the American Oil Trust to get control of two-thirds of the stock of the Bienville Oil Works. The corporation was dissolved, and, the debts having been paid, nothing was left. Plaintiff brings a suit, to recover his damages against the directors of his own corporation and those persons connected with the American Oil Trust who were engaged in the scheme.

Opinion.

“The action of the majority in the instant case being lawful, as done with legal sanction and authority, this court is powerless to inquire into and determine its expediency or the sufficiency of the motives which prompted and dictated it without transforming itself into the corporation and acting as its board of administrators, which it surely cannot do.”

Plaintiff cannot recover.

MAINE.
STATUTE.

LAWS OF 1889, PAGE 235.

AN ACT to prevent such formation of trusts, combination of business firms, incorporated and unincorporated companies, or association of persons or stockholders, as may be contrary to public policy.

Be it enacted by the Senate and House of Representatives in Legislature assembled, as follows:

§ 1. It shall be unlawful for any firm or incorporated company, or any number of firms or incorporated companies, or any unincorporated company, or association of persons or stockholders, organized for the purpose of manufacturing, producing, refining, or mining any article or product which enters into general use and consumption by the people, to form or organize any trust, or to enter into any combination of firms, incorporated or unincorporated companies, or association of stockholders, or to delegate to any one or more board or boards of trustees or directors the power to conduct and direct the business of the whole number of firms, companies or associations which may have, or which may propose to form a trust, combination or association inconsistent with the provisions of this section and contrary to public policy.

§ 2. No certificate of stock, or other evidence of interest, in any trust, combination, or association, as named in section one of this act, shall have legal recognition in any court in this state, and any deed to real estate given by any person, firm, or corporation, for the purpose of becoming interested in such trust, combination or association, or any mortgage given by the latter to the seller, as well as all certificates growing out of such transaction, shall be void.

§ 3. Any incorporated company now operating under the laws of this state, and which at the date of the passage of this act, may be interested in any trust, combination or association, named in section one of this act, or any firm, incorporated or unincorporated company, or association of persons or

stockholders, who shall enter into or become interested in such trust, combination or association, after the passage of this act, shall be deemed guilty of a misdemeanor, and be subject to a fine of not less than five nor more than ten thousand dollars: *Provided*, That nothing in this section shall be so construed as to apply to such incorporated companies as shall, within ninety days from the date of the passage of this act, withdraw from and sever all connections with such trust, combination or association.

§ 4. It shall be the duty of the secretary of state, as soon as may be after the passage of this act, to forward to the president, secretary or treasurer, of each incorporated company organized for the purpose of manufacturing, producing, refining or mining any article or product which enters into general use and consumption by the people, and doing business within this state, a copy of this act, and also a letter of inquiry as to whether said corporation has merged all or any part of its business or interests in or with any trust, combination or association of persons or stockholders as named in section one of this act, and to require an answer, under oath, of the president, secretary, treasurer, or directors of said company, a form of affidavit, together with questions to be answered, shall be prescribed by the secretary of state, and forwarded with said letter, and on neglect or refusal to make answers under oath to such questions for the term of ninety days from the date of this act, the secretary of state shall notify the attorney-general, whose duty it shall be forthwith to file an information in the nature of a writ of quo warranto, with the supreme judicial court, against said corporation, and the court may, upon hearing and proof of such neglect or refusal, decree the dissolution of said corporation, and its corporate rights and powers shall be terminated.

Approved March 7, 1889.

MASSACHUSETTS.

RESOLUTION.

ACTS AND RESOLUTIONS OF 1892, PAGE 589.

RESOLUTION against the monopoly of mining and transporting of anthracite coal.

Resolved, That, whereas a combination has been formed which has secured a substantial monopoly of mining and transporting anthracite coal, so that our people for this necessity, essential to their life and prosperity, are placed at the mercy of a few individuals who have already indicated their purpose by a large and unusual increase in the price of fuel, we therefore request our Senators and Representatives in Congress to make all reasonable efforts to secure the passage of laws effectually to prevent such combinations, destroy such monopolies and put the supply of fuel as nearly as may be beyond the reach of private speculation. The Secretary of the Commonwealth is requested to transmit forthwith a copy of this resolution to each of the Senators and Representatives.

COMMON-LAW DECISION.

Gloucester Isinglass and Glue Co. v. Russia Cement Co.

154 Mass., 92.

June 25, 1891.

Statement.

Plaintiff and defendant were competing manufacturers of fish glue, made of fish-skins, which are valuable for no other purpose. Plaintiff and defendant were the only manufacturers of this article. They made a contract whereby they should not compete with each other in the purchase of fish-skins, but agreed that they should pay a certain price for them and that each one should have his part, no matter under whose contract they were purchased. The glue was to be sold by both at the same price. After several years the defendant made contracts with nearly all the producers

of fish-skins for their purchase until the year 1900. Then he refused to give plaintiff his share, saying that the contract was illegal, it being in restraint of trade. Plaintiff brings a bill in equity for specific performance of the contract.

Opinion.

Fish glue is not a necessary of life, and the skins to be purchased under the contract were worthless for anything besides glue. The contract was not against public policy. Even a court of equity will enforce it.

Defendant must specifically carry out the contract.

MICHIGAN.

CONSTITUTIONAL PROVISION.

ARTICLE XIX—A.

§ 2. No railroad corporation shall consolidate its stock, property, or franchises, with any other railroad corporation owning a parallel or competing line; and in no case shall any consolidation take place except upon public notice given at least sixty days to all stockholders, in such manner as shall be provided by law.

[Adopted, 1870.]

STATUTES.

LAWS OF 1889, ACT 225.

AN ACT declaring certain contracts, agreements, understandings, and combinations unlawful, and to provide punishment for those who shall enter into the same or do any act in performance thereof.

§ 1. That all contracts, agreements, understandings and combinations made, entered into, or knowingly assented to, by and between any parties capable of making a contract or agreement which would be valid at law or in equity, the purpose or object or intent of which shall be to limit, control, or in any manner to restrict or regulate the amount of production or the quantity of any article or commodity to be raised or produced by mining, manufacture, agriculture or any other branch of business or labor, or to enhance, control or regulate the market price thereof, or in any manner to prevent or restrict free competition in the production or sale of any such article or commodity, shall be utterly illegal and void, and every such contract, agreement, understanding and combination shall constitute a criminal conspiracy. And every person who, for himself personally, or as a member or in the name of a partnership, or as a member, agent, or officer of a corporation or of any association for business purposes of any kind, who shall enter into or knowingly consent to any

such void and illegal contract, agreement, understanding or combination, shall be deemed a party to such conspiracy. And all parties so offending shall, on conviction thereof, be punished by fine of not less than fifty dollars, nor more than three hundred dollars, or by imprisonment in the county jail not more than six months or by both such fine and imprisonment, at the discretion of the court. And the prosecution for offenses under this section may be instituted and the trial had in any county where any of the conspirators became parties to such conspiracy, or in which any of the conspirators shall reside. *Provided, however,* That this section shall in no manner invalidate or affect contracts for what is known and recognized at common law and in equity as contracts for the "Good will of a Trade or Business;" but that such contracts shall be left to stand upon the same terms and within the same limitations recognized at common law and in equity.

§ 2. Every contract, agreement, understanding, and combination declared void and illegal by the first section of this act shall be equally void and illegal within this state, whether made and entered into within or without this state.

§ 3. The carrying into effect, in whole or in part, of any such illegal contract, agreement, understanding or combination as mentioned in the first section of this act and every act which shall be done for that purpose by any of the parties or through their agency or the agency of any one of them, shall constitute a misdemeanor, and on conviction the offenders shall be punished by imprisonment in the state prison not more than one year, or in the county jail not more than six months, or by fine not less than one hundred nor more than five hundred dollars, or by both such fine and imprisonment in the discretion of the court.

§ 4. Any corporation now or hereafter organized under the laws of this state, which shall enter into any contract, agreement, understanding or combination declared illegal and criminal by the first section of this act, or shall do any act towards or for the purpose of carrying the same into effect in whole or in part, and who shall not within thirty days from the time when this act shall take effect, withdraw its assent thereto and repudiate the same and file in the office of the secretary of state such refusal and repudiation under its corporate seal, shall forfeit its charter and all its rights and franchises thereunder.

§ 5. It shall be the duty of the attorney-general upon his own relation, or upon the relation of any private person, whenever he shall have good reasons to believe that the same can be established by proofs, to file an information in the nature of a quo warranto against any corporation offending against any of the provisions of this act; and thereupon the same proceedings shall be had as provided by chapter 298 of Howell's Annotated Statutes, relating to proceedings of information in the nature of quo warranto, against corporations offending against any of the provisions of the act or acts creating, altering or renewing such corporations, and in other cases.

§ 6. The provisions of this act shall not apply to agricultural products or live stock while in the hands of the producer or raiser, nor to the services of laborers or artisans who are formed into societies or organizations for the benefit and protection of their members.

§ 7. It shall be the duty of the secretary of state to cause this act to be published for four successive weeks in some daily paper in each of the cities of Lansing, Detroit, Grand Rapids and Marquette, commencing within ten days after this act shall take effect, and he shall also within the same time cause to be mailed to the corporations, whose articles of association are on file in his office, a printed copy of this act, with a notice calling special attention thereto.

Approved July 1, 1889.

LAWS OF 1899, ACT 49.

AN ACT to prevent trusts, monopolies and combinations of capital, skill or arts, to create or carry out restriction in trade or commerce; to limit or reduce the production, or increase or reduce the price, of merchandise or any commodity; to prevent competition in manufacturing, making, transportation, sale or purchase of merchandise, produce or any commodity; to fix at any standard or figure, whereby its price to the public or consumer shall be in any manner controlled or established, any article or commodity of merchandise, produce or commerce intended for sale, barter, use or consumption.

The People of the State of Michigan enact;

§ 1. That a trust is a combination of capital, skill or arts by two or more persons, firms, partnerships, corporations or associations of persons, or of any two or more of them, for either, any or all of the following purposes:

1. To create or carry out restrictions in trade or commerce;

2. To limit or reduce the production, or increase or reduce the price of, merchandise or any commodity;

3. To prevent competition in manufacturing, making, transportation, sale or purchase of merchandise, produce or any commodity;

4. To fix at any standard or figure, whereby its price to the public or consumer shall be in any manner controlled or established, any article or commodity of merchandise, produce or commerce intended for sale, barter, use or consumption in this State;

5. It shall hereafter be unlawful for two or more persons, firms, partnerships, corporations or associations of persons, or of any two or more of them, to make or enter into or execute or carry out any contracts, obligations or agreements of any kind or description, by which they shall bind or have bound themselves not to sell, dispose of or transport any article or any commodity or any article of trade, use, merchandise, commerce or consumption below a common standard figure or fixed value, or by which they shall agree in any manner to keep the price of such article, commodity or transportation at a fixed or graduated figure, or by which they shall in any manner establish or settle the price of any article, commodity or transportation between them or themselves and others, so as to directly or indirectly preclude a free and unrestricted competition among themselves, or any purchasers or consumers, in the sale or transportation of any such article or commodity, or by which they shall agree to pool, combine or directly or indirectly unite any interests that they may have connected with the sale or transportation of any such article or commodity, that its price might in any manner be affected. Every such trust as is defined herein is declared to be unlawful, against public policy and void.

§ 2. For a violation of any of the provisions of this act by any corporation or association mentioned herein, it shall be the duty of the Attorney General, or the prosecuting attorney of the proper county, to institute proper suits or quo warranto proceedings in the court of competent jurisdiction in any of the county seats in the State where such corporation or association exists or does business, or may have a domicile. And when such suit is instituted by the Attorney General in quo warranto, he may also begin any such suit in the supreme court of the State, or the circuit court of Ingham,

Kent or Wayne counties, for the forfeiture of its charter rights, franchises or privileges and powers exercised by such corporation or association, and for the dissolution of the same under the general statutes of the State.

§ 3. Every foreign corporation, as well as any foreign association, exercising any of the powers, franchises or functions of a corporation in this State, violating any of the provisions of this act, is hereby denied the right and prohibited from doing any business in this State, and it shall be the duty of the Attorney General to enforce this provision by bringing proper proceedings in quo warranto in the supreme court, or the circuit court of the county in which defendant resides or does business, or other proper proceedings by injunction or otherwise. The Secretary of State shall be authorized to revoke the certificate of any such corporation or association, heretofore authorized by him to do business in this State.

§ 4. Any violation of either or all of the provisions of this act shall be and is hereby declared a conspiracy against trade, and any person who may become engaged in any such conspiracy or take part therein, or aid or advise in its commission, or who shall as principal, manager, director, agent, servant or employer, or in any other capacity, knowingly carry out any of the stipulations, purposes, prices, rates, or furnish any information to assist in carrying out such purposes, or orders thereunder or in pursuance thereof, shall be punished by a fine of not less than fifty dollars nor more than five thousand dollars, or be imprisoned not less than six months nor more than one year, or by both such fine and imprisonment. Each day's violation of this provision shall constitute a separate offense.

§ 5. In any indictment for any offense named in this act, it is sufficient to state the purpose or effects of the trust or combination, and that the accused is a member of, acted with or in pursuance of it, or aided or assisted in carrying out its purposes, without giving its name or description, or how, when and where it was created.

§ 6. In prosecutions under this act, it shall be sufficient to prove that a trust or combination, as defined herein, exists, and that the defendant belonged to it, or acted for or in connection with it, without proving all the members belonging to it, or proving or producing any article of agreement, or any written instrument on which it may have been based; or

that it was evidenced by any written instrument at all. The character of the trust or combination alleged may be established by proof of its general reputation as such.

§ 7. Each and every firm, person, partnership, corporation or association of persons, who shall in any manner violate any of the provisions of this act, shall for each and every day that such violations shall be committed or continued, after due notice given by the Attorney General or any prosecuting attorney, forfeit and pay the sum of fifty dollars, which may be recovered in the name of the State, in any county where the offense is committed, or where either of the offenders reside. And it shall be the duty of the Attorney General, or the prosecuting attorney of any county on the order of the Attorney General, to prosecute for the recovery of the same. When the action is prosecuted by the Attorney General against a corporation or association of persons, he may begin the action in the circuit court of the county in which defendant resides or does business.

§ 8. That any contract or agreement in violation of the provisions of this act shall be absolutely void and not enforceable either in law or equity.

§ 9. That the provisions hereof shall be held cumulative of each other and of all other laws in any way affecting them now in force in this State.

§ 10. It shall not be lawful for any person, partnership, association or corporation, or any agent thereof, to issue or to own trust certificates, or for any person, partnership, association or corporation, agent, officer or employe, or the directors or stockholders of any corporation, to enter into any combination, contract or agreement with any person or persons, corporation or corporations, or with any stockholder or director thereof, the purpose and effect of which combination, contract or agreement shall be to place the management or control of such combination or combinations, or the manufactured product thereof, in the hands of any trustee or trustees with the intent to limit or fix the price or lessen the production and sale of any article of commerce, use or consumption, or to prevent, restrict or diminish the manufacture or output of any such article, and any person, partnership, association or corporation that shall enter into any such combination, contract or agreement for the purpose aforesaid shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be

punished by a fine not less than fifty dollars, nor more than one thousand dollars.

§ 11. In addition to the criminal and civil penalties herein provided, any person who shall be injured in his business or property by any other person or corporation or association or partnership, by reason of anything forbidden or declared to be unlawful by this act, may sue therefor in any court having jurisdiction thereof in the county where the defendant resides or is found, or any agent resides or is found, or where service may be obtained, without respect to the amount in controversy, and to recover two-fold the damages by him sustained, and the costs of suit. Whenever it shall appear to the court before which any proceedings under this act may be pending, that the ends of justice require that other parties shall be brought before the court, the court may cause them to be made parties defendant and summoned, whether they reside in the county where such action is pending, or not.

§ 12. The word "person" or "persons" whenever used in this act, shall be deemed to include corporations, partnerships and associations existing under or authorized by the laws of the State of Michigan, or any other State, or any foreign country.

§ 13. All acts or parts of acts contravening the provisions of this act are hereby repealed.

[Took effect, September 22, 1899.]

COMMON-LAW DECISIONS.

David M. Richardson v. Christian H. Buhl and Russell A. Alger.

77 Mich., 632.

November, 1889.

Statement.

The Diamond Match Company was organized in 1880 for the purpose of uniting in one corporation all the match manufacturers in the United States and Canada. In furtherance of this object an important contract was entered into between plaintiff and defendants. Now the court is called upon to construe this contract. The legality of it is not questioned by either party, but the court of its own accord considers it.

Opinion.

"All combinations among persons or corporations for the purpose of raising or controlling the prices of merchandise,

or any of the necessities of life, are monopolies, and intolerable, and ought to receive the condemnation of all courts. In my judgment, not only is the enterprise in which the Diamond Match Company is engaged an unlawful one, but the contract in question in this case, being made to further its objects and purposes, is void upon the ground that it is against public policy."

The court refuses to construe the contract or in any way aid the enterprise.

Daniel Lovejoy and E. W. Lovejoy v. Jacob Michels.

88 Mich., 15.

October 16, 1891.

Statement.

Plaintiffs sold machine knives to the defendant without an agreement as to the price. These knives were under the control of an association, which kept the price at which they could be purchased in the market at a figure which was unreasonable. The question arises whether defendant must pay the fair price for these knives or the market price made by this association.

Opinion.

Held that such an association was unlawful; that the market price fixed by it would be given no weight in a court, and that all plaintiffs can recover is the fair price for the knives.

MINNESOTA.

STATUTES.

STATUTES OF MINNESOTA, 1891.

§ 6092. **Conspiracy.**—If two or more persons conspire, * * * to commit any act injurious to the public health, to public morals, or to trade or commerce, or for the perversion or obstruction of justice, or of the due administration of the laws, each of them is guilty of a misdemeanor.

[Passed in 1885.]

LAWS OF 1891, CHAP. 99.

AN ACT to prohibit pools and trusts in the State of Minnesota.

Be it enacted by the legislature of the State of Minnesota,

§ 1. If any corporation organized under the laws of this state or any other state or country for transacting or conducting any kind of business in this state or any partnership or individual shall create, enter into, become member of or a party to any pool, trust, agreement, combination or confederation with any other corporation, partnership or individual to regulate or fix the price of oil, lumber, coal, grain, flour, provisions or any other commodity or article to be manufactured, mined, produced or sold, in this state, shall be deemed guilty of a conspiracy to defraud, and be subject to indictment and punishment, as provided in the next section.

§ 2.¹ Any person or corporation found guilty of a violation of this act shall be punished by a fine of not less than one hundred (100) dollars nor to exceed five thousand (5,000) dollars, and be imprisoned in the state prison for not less than one year nor more than ten years: *Provided, however,* That this act shall not affect nor shall the same apply to any offense committed before the passage hereof; but any persons having violated the provisions of said section previous to the passage of this act, shall be prosecuted and

¹ Section 2 is given as amended by an act of April 8, 1893.

punished in the manner and according to the provisions of the statutes in force at the time of the commission of said offense.

§ 3. Upon the trial of an indictment against a corporation or a copartnership for a violation of the first section of this act, all officers and agents of such corporation or copartnership shall be competent witnesses against the defendant on trial, and such officers and agents may be compelled to testify against such defendant and produce all books and papers, in his custody or under his control pertinent to the issue in such trial, and shall not be excused from answering any such question or from producing any books and papers because the same might tend to criminate such witness; but nothing which such witness shall testify to and no books or papers produced by him shall in any manner be used against him in any suit, civil or criminal, to which he is a party.

§ 4. All acts and parts of acts in conflict with this act be and the same are hereby repealed.

§ 5. This act shall take effect and be in force from and after its passage.

Approved April 20, 1891.

LAWS OF 1899, CHAP. 359.

AN ACT to prevent the organization of trusts and to provide in certain cases for the forfeiture of the charter of corporations organized under the laws of this State, and to prevent corporations, trusts or combinations under certain circumstances from doing business or enforcing contracts in respect thereto, under the laws of this State.

Be it enacted by the Legislature of the State of Minnesota :

§ 1. Any contract, agreement, arrangement, or conspiracy, or any combination in the form of a trust or otherwise, hereafter entered into which is in restraint of trade or commerce within this State or in restraint of trade or commerce between any of the people of this State and any of the people of any other State or country, or which limits or tends to limit or control the supply of any article, commodity or utility, or the articles which enter into the manufacture of any article or [of] utility, or which regulates, limits or controls or raises or tends to regulate, limit, control or raise the market price of any article, commodity or utility, or tends to limit or regulate the production of any such article, commodity or utility, or in any manner destroys, limits or interferes with open and

free competition in either the production, purchase or sale of any commodity, article of utility is hereby prohibited and declared to be unlawful.

That when any corporation heretofore or hereafter created, organized or existing under the laws of this State, whether general or special, hereafter unites in any manner with any other corporation wheresoever created, or with any individual, whereby such corporation surrenders or transfers, by sale or otherwise, in whole or in part, its franchise, rights or privileges or the control or management of its business to any other corporation or individual, or whereby the business or the management or control of the business of such corporation is limited, changed or in any manner affected, and the purpose or effect of such union or combination is to limit, control or destroy competition in the manufacture or sale of any article or commodity, or is to limit or control the production of any article or commodity, or is to control or fix the price or market value of any article or commodity, or the price or market value of the material entering into the production of any article or commodity or in case the purpose or effect of such union or combination is to control or monopolize in any manner the trade or commerce, or any part thereof, of this State, or of the several States, such union, combination, agreement, arrangement or contract is hereby prohibited and declared to be unlawful.

§ 2. Every person who shall either directly or indirectly make any such contract, agreement or arrangement, or enter into any such combination, conspiracy or trust as defined in section one (1) of this act, shall be guilty of a felony and, on conviction thereof, shall be punished by a fine of not less than five hundred dollars (\$500), nor more than five thousand dollars (\$5,000), or by imprisonment in the state's prison for not less than three (3) years nor more than five (5) years.

§ 3. Any corporation heretofore or hereafter created, organized or existing under the laws of this State which shall hereafter either directly or indirectly make any contract, agreement or arrangement, or enter into any combination, conspiracy or trust as defined in section (1) of this act, shall, in addition to the penalty prescribed in section two (2) of this act, forfeit its charter, rights and franchises, and it shall thereafter be unlawful for such corporation to engage in business, either as a corporation or as a part of any corporation, trust or monopoly, except as to the final disposition of its property under the laws of this State.

Any corporation organized under the laws of any other state, territory or country, which is now located or which may hereafter be located within this State, and engages in the manufacture, production or sale of any article therein which shall either directly or indirectly make any contract, agreement or arrangement or enter into any combination, conspiracy or trust as defined in section one (1) of this act, shall, in addition to the penalty prescribed in section two (2) of this act, be prohibited from doing any further business in this State except as to the final disposition of its property under the laws of this State.

§ 4. Any contract by any person, partnership, association or corporation, whether domestic or foreign, made in conducting business contrary to the provisions of section one (1) of this act, shall not be enforced in any court of this State in favor of such persons, partnership, association or corporation.

§ 5. Any person who shall enter into any correspondence, negotiations or agreement in this State, or who shall, being a resident of this State, go into another state, territory or country for the purpose of entering into any negotiations or agreement which tend to the formation of any contract or combination forbidden by this act, shall be guilty of a felony, and be subject to all the penalties of this act.

§ 6. That for the purpose of carrying out the provisions of this act any citizen of this State may, and it is hereby declared to be the duty of the attorney general, to institute, in the name of the State, proceedings in any court of competent jurisdiction against any person, partnership, association or corporation who may be guilty of violating any of the provisions of section one (1) of this act, for the purpose of imposing the penalties imposed by this act or securing the enforcement of section three (3) hereof: *Provided*, That when such proceedings are instituted by any one other than the attorney general, the State shall not be in any manner liable for the costs or for any of the expenses of such proceedings: *And provided further*, That when the attorney general deems it necessary, he is hereby authorized to employ counsel to assist in the prosecution of any action brought under the provisions of this act.

§ 7. The word person as used in this act shall be construed to include any corporation or association formed or existing under any law of this State or any other state or country.

§ 8. This act shall take effect and be in force from and after its passage.

Approved April 21, 1899.

COMMON-LAW DECISIONS.

Cornelius G. Kolff v. St. Paul Fuel Exchange et al.*48 Minn., 215.**January 25, 1892.***Statement.**

The defendants are a corporation and its directors. It was formed, as stated in its articles of incorporation, for the business of "buying, selling and dealing in all kinds of coal and wood and to otherwise use and dispose of the same and to lease and purchase such land and buildings as may be necessary for such business, and to buy, sell, and deal in all kinds of fuel, and to do any and all things that may legally be done to promote the interest of this corporation and its stockholders." A by-law was made by the company that if any stockholder should sell fuel below the prices fixed by the exchange he should pay a fine of \$200, or be denied all privileges of the exchange. Plaintiff has sold fuel for less than the price fixed by the corporation, and it is about to enforce the aforementioned by-law against him; he prays for an injunction.

Opinion.

There is nothing in the charter of defendant corporation which gives it a right to in any way manage the business of its stockholders. The by-law is, therefore, *ultra vires* and void.

An injunction is granted.

Bohn Manufacturing Co. v. W. G. Hollis et al.*54 Minn., 223.**July 20, 1893.***Statement.**

A large number of retail lumber dealers formed an association whereby they agreed that they would not deal with any manufacturer or wholesale dealer who should sell lumber directly to consumers, at any point where a member of the association was carrying on a retail yard. They further provided in their by-laws that, whenever any wholesale dealer or manufacturer made any such sale, their secretary should notify all the members of the fact. Plaintiff having made such a sale, the secretary threatened to send notice of the fact to all the members of the association. Plaintiff seeks to have him enjoined.

Opinion.

We are in an age of associations formed for mutual protection, and many of these are for the public interest. They must not be declared by the courts to be illegal unless there is a principle of law which they have violated. "What one man may lawfully do singly, two or more may lawfully agree to do jointly. The number who unite to do the act cannot change its character from lawful to unlawful."

Injunction refused.

MISSISSIPPI.

CONSTITUTIONAL PROVISION.

§ 198. The legislature shall enact laws to prevent all trusts, combinations, contracts, and agreements inimical to the public welfare.

[Adopted, November 1, 1890.]

STATUTE.

ANNOTATED CODE, CHAP. 140.

TRUSTS AND COMBINES.

4437. Definition of term; criminal conspiracy.—A trust and combine is a combination, contract, understanding, or agreement, express or implied, between two or more persons, corporations, or firms or associations of persons, or between one or more of either with one or more of the others—

- (a) In restraint of trade;
 - (b) To limit, increase, or reduce the price of a commodity;
 - (c) To limit, increase, or reduce the production or output of a commodity;
 - (d) Intended to hinder competition in the production, importation, manufacture, transportation, sale, or purchase of a commodity;
 - (e) To engross or forestall a commodity;
 - (f) To issue, own, or hold the certificates of stock of any trust or combine;
 - (g) To place the control, to any extent, of business or of the products or earnings thereof, in the power of trustees, by whatever name called;
 - (h) By which any other person than themselves, their proper officers, agents, and employes shall, or shall have the power to dictate or control the management of business; or
 - (i) To unite or pool interests in the importation, manufacture, production, transportation, or price of a commodity;
- And is inimical to the public welfare, unlawful, and a criminal conspiracy. But this shall not apply to the associa-

tions of those engaged in husbandry in their dealings with commodities in the hands of the producer, nor to the societies of artisans, employes, and laborers formed for the benefit and protection of their members.

4438. Contracts void.—Every contract or agreement to enter into or pursue any trust and combine, and every contract or agreement made by another with any trust and combine, or with any member of a trust and combine, for any purpose relative to the business of such trust and combine, is void, and cannot be enforced in any court.

4439. Corporations forfeit their charters.—Every corporation which shall enter into, be concerned in, or share the profit or loss of any trust and combine, shall forfeit its charter and franchise, and, if a foreign corporation, shall forfeit its right to do business in this state.

4440. Actions against for damages.—Any person injured or damaged by a trust and combine, or by its effect, direct or indirect, may recover double the amount paid by him for any commodity or service whose price or cost was affected by the trust and combine, besides all consequential damages; and he may maintain his action therefor against one or more of the parties to the trust and combine, their attorneys, officers, agents, and employes, and that whether or not all the parties to the trust and combine be known, or whether or not the trust and combine were made or shall exist in this state.

4441. To defraud in public contracts.—If any person, corporation, firm, or association of persons shall combine with any other person, corporation, firm, or association of persons, or if either of them combine with one or more of the other to prevent, by pooling, any or either of said persons, corporations, firms, or associations of persons from separately or individually bidding for the performance of a public work for the state, or any county, municipality, or levee board thereof; or if any person, corporation, firm, or association of persons shall prevent, by persuasion or reward, any other person, corporation, firm, or association of persons, or any one or more of them, from bidding for the performance of such public work, they, and each of them, shall be guilty of a misdemeanor, and shall be fined not less than twenty-five dollars nor more than one thousand dollars.

4442. Moneys not collectible.—All sums of money to be paid on any contract on behalf of the state, or any county,

municipality, or levee board thereof, when the provisions of the last section have been violated, shall not be collectible, nor shall the same be paid by any officer or board having the payment thereof.

[Passed, February 22, 1890.]

CASE CONSTRUING STATUTE.

American Fire Insurance Co. et al. v. State.

22 So. Rep., 99.

May 24, 1897.

The only point decided in this case was that the indictment under which plaintiffs had been convicted was defective; but the court held by way of *dicta* that an agreement between several fire insurance companies to delegate to an association the power to prescribe premium rates, and to abide by such rates, is a trust and combine within section 4437, Mississippi Code 1892, where it says:

"A trust and combine is a combination * * * (g) to place the control, to any extent, of business or of the products or earnings thereof, in the power of trustees, by whatever name called."

COMMON-LAW DECISION.

Greenville Compress and Warehouse Co. v. Compress and Warehouse Co.

70 Miss., 669.

March, 1893.

Statement.

Plaintiff and defendant were corporations engaged in the same business. Their directors entered into a contract to consolidate the two corporations into one new corporation. The question arose whether the contract was binding.

Opinion.

Held that inasmuch as there was nothing in the charters of the corporations giving them this power, the contract was *ultra vires* and void.

MISSOURI.

STATUTES.

LAWS OF 1891, PAGE 186.

POOLS, TRUSTS, AND CONSPIRACIES ; UNLAWFUL COMBINATIONS.

AN ACT providing for the punishment of pools, trusts and conspiracies, to control prices, and as to evidence and prosecution in such cases.

Be it enacted by the General Assembly of the State of Missouri as follows,

§ 1.¹ Any corporation organized under the laws of this or any other state or country for transacting or conducting any kind of business in this state, or any partnership or individual or other association of persons whatsoever, who shall create, enter into, become a member of or a party to any pool, trust, agreement, combination, confederation or understanding with any other corporation, partnership, individual or any other person or association of persons, to regulate or fix the price of any article of manufacture, mechanism, merchandise, commodity, convenience, repair, any product of mining, or any article or thing whatsoever, or the price or premium to be paid for insuring property against loss or damage by fire, lightning or storm, or to maintain said price when so regulated or fixed, or shall enter into, become a member of or a party to any pool, agreement, contract, combination or confederation to fix or limit the amount or quantity of any article of manufacture, mechanism, merchandise, commodity, convenience, repair, any product of mining, or any article or thing whatsoever, or the price or premium to be paid for insuring property against loss or damage by fire, lightning or storm, shall be deemed and adjudged guilty of a conspiracy to defraud, and be subject to penalties as provided in this act: *And provided, That*

¹ Section 1 is given as amended by Laws of 1895, page 237; Laws of 1897, page 208 ; and Laws of 1899, page 314.

if such insurance companies or their agents or the board of fire underwriters doing business in any city of this state, shall combine in any city of this state, either directly or indirectly, or agree or attempt to agree, directly or indirectly, to fix or regulate the price of premium to be paid for insuring property located within or outside of such city against loss or damage by fire, lightning or storm, such company so violating the provisions of this act, either by itself, its agents, or by any such board of underwriters, shall be taken and deemed to have forfeited its right to do business in this state, and shall become liable to all the penalties and forfeitures provided for by the provisions of this act.

§ 1a.¹ That from and after the passage of this act, all arrangements, contracts, agreements or combinations between persons or corporations, or between persons or any association of persons and corporations, designed or made with a view to lessen, or which tend to lessen full and free competition in the importation, manufacture or sale of any article, product or commodity in this state, and all arrangements, combinations, contracts or agreements, whereby, or under the terms of which it is proposed, stipulated, provided, agreed or understood that any person, association of persons or corporations doing business in this state, shall deal in, sell or offer for sale in this state, any particular or specified article, product or commodity, and shall not during the continuance or existence of any such arrangement, combination, contract or agreement, deal in, sell or offer for sale in this state, any competing article, product or commodity, are hereby declared to be against public policy, unlawful and void; and any person, association of persons or corporations becoming a party to any such arrangement, contract, agreement or combination shall be deemed and adjudged guilty of a conspiracy to defraud, and subject to the penalties provided for in the act of which this act is amendatory.

§ 2. It shall not be lawful for any corporation to issue or to own trust certificates, or for any corporation, agent, officer or employe, or the directors or stockholders of any corporation, to enter into any combination, contract or agreement with any person or persons, corporation or corporations, or with any stockholder or director thereof, the purpose and effect of which combination, contract or agreement shall be

¹Section 1a was added by Laws of 1899, page 208.

to place the management or control of such combination or combinations, or the manufactured product thereof, in the hands of any trustee or trustees, with the intent to limit or fix the price or lessen the production and sale of any article of commerce, use or consumption, or to prevent, restrict or diminish the manufacture or output of any such article.

§ 3.¹ Any corporation or company, individual, firm or association violating any of the provisions of this act, shall forfeit not less than five dollars nor more than one hundred dollars for each day it shall continue to do so, to be recovered by an action in the name of the state, at the relation of the attorney-general, circuit or prosecuting attorney—moneys thus recovered to go into the county school fund of the county in which the cause accrues, and in the city of St. Louis into the school fund of said city.

§ 4. Any contract or agreement in violation of any provision of the preceding sections of this act shall be absolutely void.

§ 5. Any purchaser of any article or commodity from any individual, company or corporation transacting business contrary to any provision of the preceding sections of this act shall not be liable for the price or payment of such article or commodity, and may plead this act as a defense to any suit for such price or payment.

§ 6.² Any corporation created or organized by or under the laws of this state, which shall violate any provisions of the preceding sections of this act shall thereby forfeit its corporate rights and franchises, and its corporate existence shall, upon proper proof being made thereof in any court of competent jurisdiction in this state, be by the court declared forfeited, void and of non-effect, and shall thereupon cease and determine; and any corporation created or organized by or under the laws of any other state or country, which shall violate any provisions of the preceding sections of this act, shall thereby forfeit its right and privilege thereafter to do any business in this state, and upon proper proof being made thereof in any court of competent jurisdiction in this state, its rights and privileges to do business in this state shall be declared forfeited; and in all proceedings to have such forfeiture declared, proof that any person who has been acting

¹ Section 3 is given as amended by Laws of 1895, page 237.

² Section 6 is given as amended by Laws of 1895, page 237.

as the agent of such foreign corporation in transacting its business in this state has been, while acting as such agent, and in the name, behalf or interest of such corporation, violating any provision of the preceding sections of this act, shall be received as prima facie proof of the act of the corporation itself; and it shall be the duty of the clerk of said court to certify the decree thereof to the secretary of state, and if it be an insurance company, also to the superintendent of the insurance department, who shall take notice and be governed thereby as to the corporate powers and rights of said corporation.

§ 6a.¹ That whenever the corporate rights and franchises of any corporation organized under the laws of this state have been declared forfeited by the judgment of a court of competent jurisdiction for any violation of the provisions of this act, or of the act of which this act is amendatory, and whenever the right and privilege of any corporation organized under the laws of any other state or country to do business in this state has been declared forfeited by the judgment of a court of competent jurisdiction for any violation of the provisions of this act or of the act of which this act is amendatory, it shall hereafter be unlawful for any person, association of persons or corporations to deal in, sell or offer for sale in this state any article, product or commodity made, produced or manufactured, in whole or in part, by any corporation whose rights, franchises or privileges have been so declared to be forfeited; and the foregoing provisions of this section are hereby made applicable in all respects to the successor or assigns of any corporation whose rights, franchises or privileges have been so forfeited. Any person violating the provisions of this section is hereby declared to be guilty of a felony, and upon conviction, shall be punished by imprisonment in the penitentiary for a term not exceeding three years, or by imprisonment in the county jail for a term not exceeding one year, or by a fine not less than one hundred dollars nor more than one thousand dollars, or by both such fine and jail imprisonment: *Provided*, That no statement made by any person in any affidavit made under the provisions of sections seven and eight of the act of which this act is amendatory shall be competent as evidence against such person in any criminal prosecutions brought under this section.

¹Section 6a was added by Laws of 1897, page 208.

§ 7.¹ It shall be the duty of the secretary of state, on or about the first day of July of each year, to address to the president, secretary or treasurer of each incorporated company doing business in this state, a letter of inquiry as to whether the said corporation has all or any part of its business or interest in or with any trust, combination or association of persons or stockholders, as named in the preceding provisions of this act, and to require an answer, under oath of the president, secretary or treasurer or any director of said company. A form of affidavit shall be enclosed in said letter of inquiry, as follows:

AFFIDAVIT.

STATE OF MISSOURI, *County of* ———, ss:

I ———, do solemnly swear that I am the ——— (president, secretary, [treasurer] or director) of the corporation known and styled ———, duly incorporated under the laws of ———, on the ——— day of ———, 18—, and now transacting or conducting business in the state of Missouri, and that I am duly authorized to represent said corporation in the making of this affidavit, and I do further solemnly swear that the said ———, known and styled as aforesaid, has not, since the ——— day of ——— (naming the day upon which this act takes effect) created, entered into or become a member of or a party to, and was not, on the ——— day ———, nor at any day since that date, and is not now a member of or a party to any pool, trust, agreement, combination, confederation or understanding with any other corporation, partnership, individual, or any other person or association of persons, to regulate or fix the price of any article of manufacture, mechanism, merchandise, commodity, convenience, repair, any product of mining, or any article or thing whatsoever, or the price or premium to be paid for insuring property against loss or damage by fire, lightning or storm; and that it has not entered into or become a member of or a party to any pool, trust, agreement, contract, combination or confederation to fix or limit the amount or quantity of any article of manufacture, mechanism, merchandise, commodity, convenience, repair, any product of mining, or any article or thing whatsoever, or the price or premium to be paid for insuring property against loss or damage

¹ Section 7 is given as amended by Laws of 1895, page 237, and Laws of 1897, page 208.

by fire, lightning or storm; and that it has not issued and does not own any trust certificates and for any corporation, agent, officer or employe, or for the directors or stockholders of any corporation, has not entered into and is not now in any combination, contract or agreement with any person or persons, corporation or corporations, or with any stockholder or director thereof, the purpose and effect of which said combination, contract or agreement would be to place the management or control of such combination or combinations, or the manufactured product thereof, in the hands of any trustee or trustees, with the intent to limit or fix the price or lessen the production and sale of any article of commerce, use or consumption, or to prevent, restrict or diminish the manufacture or output of any article; and that it has not made or entered into any arrangement, contract or agreement with any person, association of persons or corporations designed to lessen, or which tends to lessen, full and free competition in the importation, manufacture or sale of any article, product or commodity in this state, or under the terms of which it is proposed, stipulated, provided, agreed or understood that any particular or specified article, product or commodity shall be dealt in, sold or offered for sale in this state to the exclusion, in whole or in part, of any competing article, product or commodity.

[President, secretary, treasurer or director.]

Subscribed and sworn to before me, a ———, within and for the county of ———, this ——— day of ———, 18——.

[SEAL.]

And on refusal to make oath in answer to said inquiry, or on failure to do so within thirty days from the mailing thereof, the secretary of state shall certify said fact to the prosecuting attorney of the county (the circuit attorney in the city of St. Louis) wherein said corporation is located, and it shall be the duty of such prosecuting or circuit attorney, at the earliest practicable moment, in the name of the state, and at the relation of said prosecuting or circuit attorney, to proceed against such corporation for the recovery of the money forfeit provided for in this act, and also for the forfeiture of its charter or certificate of incorporation, or its right and privilege to do business in this state.

§ 8. It shall be the duty of the secretary of state, at any time, upon satisfactory evidence that any company or association of persons duly incorporated under the laws of this or any other state, doing business in this state, has entered into any trust, combination or association, in violation of the preceding sections of this act, to demand that it shall make the affidavit as above set forth in this act as to the conduct of its business. In case of failure of compliance on the part of the corporation, then the same procedure shall ensue as is provided in section seven of this act: *Provided*, That no corporation, firm, association or individual shall be subject to any criminal prosecution by reason of anything truthfully disclosed by the affidavit required by this act, or truthfully disclosed in any testimony elicited in the execution thereof.

§ 9.¹ It shall be the duty of the attorney-general, the circuit attorney of the city of St. Louis, and the prosecuting attorney of each county, respectively, to enforce the provisions of this act. The attorney-general, the circuit or prosecuting attorneys shall institute and conduct all suits begun in the circuit courts, and upon appeal, the attorney-general shall prosecute said suits in the supreme court and courts of appeals. As compensation for his services in this behalf the attorney-general shall be entitled to his actual expenses incurred in the prosecution of such suits, to be paid by the defendant or defendants when judgment is rendered for the state. The circuit and prosecuting attorneys shall receive for their compensation one-fourth of the penalty collected.

§ 10.² In all suits instituted under this act to forfeit the charter of corporations, or to forfeit the right of a corporation to do business in this state, where a judgment of forfeiture is obtained and the cause is not appealed to the supreme court or courts of appeals, the circuit court rendering such judgment shall allow the circuit or prosecuting attorney a fee of not less than twenty-five dollars nor more than five hundred dollars, to be paid out of the assets of said corporation; and when the attorney-general takes part in said prosecution, he shall be entitled to his actual expense, to be paid in like manner.

§ 11. It is hereby made the duty of all county officers in the state to furnish to the secretary of state any information

¹ Section 9 is given as amended by Laws of 1895, page 237.

² Section 10 is given as amended by Laws of 1895, page 237.

which he may request of them, to enable him the more fully to execute the duties imposed upon him by this act, and for such services the said county officers shall be paid by their respective counties, upon allowance by the county court, such fees as would accrue for like services for the county.

§ 12. Chapter one hundred twenty-eight, Revised Statutes 1889, entitled "Pools and trusts," is hereby repealed.

LAWS OF 1899, PAGE 316.

**POOLS, TRUSTS AND CONSPIRACIES: PREVENTING AND
RESTRAINING OPERATIONS OF SAME.**

AN ACT to prevent and restrain the continuance and operation of trusts and monopolies, and to provide procedure therefor.

Be it enacted by the General Assembly of the State of Missouri, as follows:

§ 1. Every pool, trust, agreement, combination, confederation or understanding, conspiracy or combination entered into, or created, or organized by any corporation organized under the laws of this or any other state, or any partnership or individual or other association of persons whatsoever with any other corporation, partnership, individual or any other person or association of persons to regulate, control or fix the price of any article or articles of manufacture, mechanism, merchandise, commodity, convenience or repair, or any product of mining of any kind or class, or any article or thing of any class or kind bought and sold, or the price or premium to be paid for insuring property against loss or damage by fire, lightning or storm, or to maintain said price or prices when so regulated, determined or fixed, and all agreements, combinations, confederations or conspiracies or pools made, created, entered into or organized by any corporation, partnership, individual or association of individuals to fix the amount or limit the quantity of any article or thing whatsoever, or of any article of manufacture, mechanism, commodity, convenience or repair, or any product of any class or kind of mining, are hereby declared illegal. If any two or more persons or corporations who are engaged in buying or selling any article of commerce, manufacture, mechanism, commodity, convenience, repair, any product of mining, or any article or thing whatsoever, shall enter into any pool, trust, agreement, combination, confederation, association or

understanding to control or limit the trade in any such article or thing; or to limit competition in such trade, by refusing to buy from or sell to any other person or corporation any such article or thing aforesaid, for the reason that such other person or corporation is not a member of or party to such pool, trust, combination, confederation, association or understanding; or shall boycott or threaten any person or corporation for buying from or selling to any other person or corporation who is not a member of or a party to such pool, trust, agreement, combination, confederation, association or understanding any such article or thing aforesaid, it shall be a violation of this act.

§ 2. The several circuit courts of this state are hereby invested with jurisdiction to prevent and restrain any corporation, partnership, individual or association of individuals from entering into any combinations, pools, agreements, in the form of trusts, confederation, conspiracy or understanding declared illegal by this act or any other law of this state relative to pools, trusts, conspiracies and unlawful combinations. And it shall be the duty of the attorney-general and of the prosecuting attorneys, when so directed by the attorney-general, to institute proceedings in equity to prevent and restrain all violations of this act and of any other law concerning pools, trusts and conspiracies and unlawful combinations. Such proceedings may be by way of petition, setting forth the case and praying that such violation be enjoined or otherwise prohibited. When the parties complained of shall have been duly notified of such petition the court shall proceed as soon as may be to the hearing and determination of the case; and pending such petition and before final decree the court may at any time make such temporary restraining order or prohibition as shall be deemed just in the premises.

§ 3. Whenever it shall appear to the court before which any proceeding under this act may be pending that the ends of justice require that other parties should be brought before the court, the court may cause them to be summoned, whether they reside in the circuit in which the court is held or not; and subpoenas and summonses may be in proceedings under this act served by the sheriff of any county in any place in this state, and the same shall be valid.

§ 4. Any person injured in his business or property by any other person or corporation by reason of anything forbidden or declared to be unlawful by this act may sue there-

for in any circuit court of this state in which the defendant or defendants, or any one of them reside, or have any officer, agent, office or representative, or in which any such defendant or any agent, officer or representative may be found, without regard to the amount in controversy, and shall recover three-fold the damages by him sustained, and the costs of suit, including a reasonable attorney's fee.

§ 5. It is hereby expressly declared to be the intent of this act not to repeal any former act or part thereof on the subject of pools, trusts, conspiracies and unlawful combinations, except the same be in direct and irreconcilable conflict herewith. And it is hereby declared to be only the expressed purpose of this act to provide an additional remedy for the control and restraint of pools, trusts and conspiracies in restraint of trade and unlawful combination.

Approved May 10, 1899.

LAWS OF 1899, PAGE 318.

POOLS, TRUSTS AND CONSPIRACIES: PROVIDING FOR TAKING TESTIMONY.

AN ACT to provide for taking testimony in proceedings against pools, monopolies in commodities, trusts, conspiracies, and confederations in restraint of trade, and to provide for procuring the attendance before authorized officers and courts in Missouri of officers, agents, directors, and employes of alleged trusts, monopolies in commodities, pools and combinations in order that their testimony may be taken.

Be it enacted by the General Assembly of the State of Missouri as follows:

§ 1. Whenever any proceeding shall be commenced in any court of competent jurisdiction in this state by the attorney-general against any corporation or corporations, individual or individuals or associations of individuals, or joint stock associations or co-partnership, under the law against the formation and maintenance of pools, trusts of any kind, monopolies in commodities, combinations or organizations in restraint of trade to dissolve the same or to restrain their formation or maintenance in this state, then in such case, if the attorney-general desires to take the testimony of any officer, director, agent or employe of any corporation or joint stock association proceeded against, or in case of a co-partnership, any member of said partnership or any employe thereof, in any court in which said action may be pending or

before any person duly authorized by any court to take testimony in any such action; and individual or individuals, whose testimony is desired, are without the jurisdiction of the courts of this state, or reside without the state of Missouri, then, in such case, the attorney-general shall file in said court in term time, or in vacation, or with any person duly authorized to take the testimony in such case, a statement, in writing, setting forth the name or names of the persons or individuals whose testimony he desires to take and the time when, and the place in the state where he desires the said persons to appear; and, thereupon, the court in which, or one of the judges thereof, or the person before whom testimony is being taken, shall issue immediately a notice, in writing, directed to the attorney or attorneys of record in said cause, or any agent, officer or employe of any corporation, joint stock association or co-partnership which are parties to said action, notifying said attorneys of record, or officer, agent or employe, that the testimony of the person or persons named in the application of the attorney-general is desired, and requiring said attorney or attorneys of record, or said officer, agent or employe, to whom said notice is delivered or upon whom the same is served, to have said officer, agent, employe or representative of said co-partnership or agent thereof whose evidence it is desired to take at the place named in the application of the attorney-general and at the time fixed in said application, then and there to testify: *Provided, however,* That the said application shall always allow, in fixing said time, the same number of days for travel to reach the designated point in Missouri that would be now allowed by law in case of taking depositions: *Provided, also,* In addition to the above named time, six days shall be allowed for the attorney or attorneys of record, or the agent, officer or employe on whom notice is served, to notify the person or persons whose testimony is to be taken. Service of said notice and the return thereon, in writing, may be made by any one authorized by law to serve a subpoena.

§ 2. Whenever any attorney or attorneys of record, or any agent, officer or employe of any such corporation, joint stock association or co-partnership, shall be notified, as above provided, to request any officer, agent, director or employe to attend before any court or before any person authorized to take the testimony in said proceeding, and the person or persons whose testimony is requested, as above provided,

shall fail to appear and testify and produce whatever books, papers and documents they may be ordered to produce by the court, or the officer authorized to take said evidence, then it shall be the duty of the court, upon the motion of the attorney-general, to strike out the answer, motion, reply, demurrer or other pleading then or thereafter filed in said action or proceeding by said corporation, joint stock association or co-partnership, whose officer, agent, director or employe has neglected or failed to attend and to testify and produce all books, papers and documents he or they shall have been ordered to produce in said action by the court or person authorized to take said testimony; and said court shall proceed to render judgment by default against said corporation, joint stock association or co-partnership.

§ 3. *And it is further provided*, That in case any officer, agent, employe, director, or representative of any corporation, joint stock association or co-partnership in such proceeding as hereinbefore mentioned, who shall reside or be found within this state, shall be subpoenaed to appear and testify or to produce papers, books and documents, and shall fail, neglect or refuse to do so, then the answer, motion, demurrer or other pleading then or thereafter filed by said corporation, joint stock association or co-partnership in any such proceeding shall, on motion of the attorney-general be stricken out and judgment in said cause rendered against said corporation, joint stock association or co-partnership.

§ 4. There being no adequate and speedy method now provided for the obtaining of testimony in this class of proceedings, constitutes an emergency within the meaning of the constitution; therefore, this act shall take effect and be in force from and after its passage and approval.

Approved May 4, 1899.

LAWS OF 1899, PAGE 320.

POOLS, TRUSTS AND CONSPIRACIES: TESTIMONY, HOW SECURED.

AN ACT to enable the attorney-general to secure testimony in relation to pools, trusts and conspiracies and the procedure to be followed in so doing.

Be it enacted by the General Assembly of the State of Missouri, as follows:

§ 1. For the purpose of determining whether an action or proceeding should be commenced against any pool, trust,

conspiracy or combination in restraint of trade, the attorney-general may examine and procure the testimony of witnesses in the matter herein prescribed.

§ 2. Procedure for securing testimony.—Whenever the attorney-general deems it necessary or proper before beginning any action or proceeding against any pool, trust, conspiracy or combination made, arranged, agreed upon or entered into whereby a monopoly in the manufacture, production or sale in this state of any article or commodity is or may be sought to be created, established or maintained, or whereby competition in this state in the supply or price of any article or commodity is or may be restrained or prevented, then in such case the attorney-general may present to any justice of the supreme court an application, in writing, for an order directing such persons, as the attorney-general may require, to appear before a justice of the supreme court or any examiner designated in said order and answer such relevant and material questions as may be put to them concerning any alleged illegal contract, arrangement, agreement or combination in violation of the laws of this state against pools, trusts, agreements, combinations and conspiracies in restraint of trade, or to regulate, fix or maintain the price of any commodity or to create a monopoly therein, if it appears to the satisfaction of the justice of the supreme court to whom the application for the order is made that such an order is necessary or expedient, then such order shall be granted. Such order shall be granted without notice, unless notice is required to be given by the justice of the supreme court to whom the application is made, in which event an order to show cause why such application should not be granted shall be made containing such preliminary injunction or stay as may appear to said justice to be proper or expedient, and shall specify the time when and the place where the witnesses are required to appear, and such examination shall be held in the city of Jefferson. The justice of the supreme court or the examiner may adjourn such examination from time to time and witnesses must attend accordingly.

§ 3. Order for examination.—The order for such examination must be signed by the justice making it; and the service of a copy thereof, with an endorsement by the attorney-general signed by him, to the effect that the person named therein is required to appear and be examined at the time

and place and before the justice or referee specified in such endorsement, shall be sufficient notice for the attendance of witnesses. Such endorsement may contain a clause requiring such person to produce on such examination all books, papers and documents in his possession or under his control to the subject of such examination: *Provided, however,* That the production of books and papers for inspection shall always be subject to the order of the supreme justice who has ordered such examination, and either party may, by a petition, in writing, ask that the said justice pass on the question as to whether or not said books and papers should be produced and examined and introduced in evidence. The order to appear as a witness may be served and return of service made in the same manner and by the same officer by whom a subpoena may now be served.

§ 4. Testimony of witnesses.—The testimony of each witness must be subscribed by him, and all testimony taken by such justice or examiner appointed must be certified and delivered by such justice or examiner to the attorney-general at the close of the examination. The justice or examiner shall cause said testimony to be taken down by a competent stenographer. The testimony given by a witness in a proceeding or examination under this act shall not be given against him in any criminal action or proceeding, nor shall any criminal action or proceeding be brought against such witness on account of any testimony so given by him.

§ 5. Power of examiner.—An examiner appointed under this act shall have his power and authority specified in the order appointing him. And he shall have all the ordinary power and authority of an examiner appointed by the supreme court, in addition to what special duties may be devolved on him by the order of appointment.

§ 6. Power to punish for contempt.—If any witness or witnesses be properly served, as herein provided, with notice to appear and testify, and they fail to obey said notice, or appearing, refuse to testify, the attorney-general may file a statement, in writing, with the supreme court justice setting out such facts, and said justice may, if he deems it proper, issue a citation to said parties, causing them to forthwith appear and show cause why he or they should not be fined or imprisoned, or both, for contempt. And in such contempt proceedings the justice of the supreme court shall

have full power to either fine or imprison, or both, as a punishment for either failing to appear and testify, or appearing, failing to testify, or to produce books and papers when so ordered to do.

§ 7. **Costs, how paid.**—The supreme court justice may make such order concerning the taxation and payment of costs in these proceedings against either the state of Missouri or the person examined, or any corporation, co-partnership, joint stock company, or combination of persons interested in or connected in any way with the subject of such examination. Costs taxed shall be collected in the ordinary way costs are now collected in the supreme court, and an itemized statement thereof shall be filed with the clerk of the supreme court, to whom all costs must be paid.

§ 8. There being no adequate means for the state of Missouri through its attorney-general to procure testimony relating to pools, monopolies in commodities, trusts, agreements and combinations in restraint of trade, an emergency exists within the meaning of the constitution, and therefore, this act shall take effect from and after its passage and approval.

Approved May 4, 1899.

LAWS OF 1899, PAGE 129.

CORPORATIONS: FOREIGN.

AN ACT to regulate the transaction of business in this state by corporations not organized and incorporated under the laws of this state.

Be it enacted by the General Assembly of the State of Missouri, as follows:

§ 1. No corporation organized or incorporated under the laws of any other state shall do business in this state if such company if organized in this state would organize under article 8 of chapter 42 of the Revised Statutes, or acts amendatory thereof, without first procuring a license therefor, which license shall be granted by the secretary of state.

§ 2. In order to procure such license it shall be necessary for the corporation applying therefor to file with the secretary of state a copy of its articles of association and charter granted by the state or territory under which it is organized, and if it shall appear that such company or cor-

poration could not organize under the laws of this state, license shall be refused: *Provided*, That this act shall not be construed so as to permit any corporation violating the anti-trust laws of this state to have license to transact business.

§ 3. There shall be paid to the state treasury a fee of \$10 by each company procuring license for the issuance thereof.

§ 4. It shall be the duty of the attorney-general to enforce the provisions of this act.

Approved May 23, 1899.

CASES CONSTRUING STATUTES.

**State ex rel. Crow, Attorney-General v. Aetna Insurance Co. et al.
Same v. American Cent. Insurance Co.**

51 S. W. Rep., 413.

December 13, 1898.

Opinion.

Section one of the anti-trust act of 1897, providing that any corporation doing business in Missouri which shall become a member of any combination to regulate the premium to be paid for insuring property shall be guilty of a conspiracy to defraud and subject to penalties prescribed, provided that companies may regulate the price of insurance in cities which now have or may hereafter acquire 100,000 inhabitants, does not violate section three, article four of the state constitution, which provides that the general assembly shall not pass any local or special law granting to any corporation any special privilege, because the proviso excepts fire insurance companies in all cities of that class, and applies alike to all fire insurance companies doing business therein.

National Lead Co. v. S. E. Grote Paint-Store Co.

(Pamphlet.)

St. Louis Court of Appeals, May 2, 1899.

Statement.

In 1891 there existed the National Lead Trust composed of corporations manufacturing between 50 and 75 per cent of all the white lead produced in the United States. Fearing the state and national anti-trust laws the plaintiff corporation was chartered under the laws of New Jersey to have a capital of \$30,000,000, and power, "to purchase, acquire, hold, sell, exchange or otherwise dispose of all such stocks, bonds,

securities, and obligations of other companies or corporations as may be necessary or convenient for any or all the purposes of said company." As soon as plaintiff corporation was formed it purchased the property of the members of the National Lead Trust and paid therefor in its stocks.

From plaintiff's St. Louis branch, defendant purchased lead to the value of \$1,791.23. For this plaintiff sued, and was met by the defense that plaintiff corporation was a combination in restraint of trade within the meaning of sections 1 and 2 of the Missouri trust act of 1891; and this being so, by section 5 of said act, defendant is not liable for the price of the goods. In the lower court evidence as to the organization of the National Lead Company was excluded as immaterial; and an appeal was taken to this court.

Opinion.

"If * * * the preceding trust was an unlawful combination * * * it must follow that the plaintiff corporation is equally amenable" to the trust acts, "if, as the record shows the fact to be, it actually engaged through the same methods and for identical objects in a similar business to that of the former trust, unless there is something in the mere fact of the plaintiff's corporate character which exempts it from the application of the law prohibiting combinations * * * to restrain trade. * * * The legislature referred to the corporation in its true essence as an association of persons. * * * Hence it must follow that if the stockholders and governing officers of the plaintiff corporation combined with each other to violate any of the provisions of the section under review through the instrumentality of their corporate entity, then the corporation composed by them was a party to such illegal combination. * * * A combination which is illegal under the anti-trust law, can not be operated under the cloak of a corporation by its constituent members or governing bodies."

New trial granted.

State ex rel. Crow, Attorney-General v. Firemen's Fund Insurance Co. et al.

52 S. W. Rep., 595.

June 30, 1899.

Statute construed.

"Any corporation * * * conducting any kind of business in this state which shall * * * enter into * * * any * * * combination * * * to regulate or fix the

* * * premium to be paid for insuring property * * * shall be * * * guilty of a misdemeanor.” The act provides that a corporation violating the law shall forfeit its right to do business in the state; that proof that an agent in the state of a foreign corporation has violated the act shall be *prima facie* proof that the company has; that the prosecuting attorney shall receive from \$25 to \$500 for his services. (L. 1891, p. 186 and amendments.)

Statement.

Defendants are 73 insurance companies whose agents formed a club and hired a secretary to whom all the policies were sent. They were by him examined, and, unless the premiums were according to W. J. Fetter's book of rates, they were returned; and unless they were then changed to correspond with the rate book certain penalties were inflicted by the club. Proceedings were instituted to forfeit the right of these companies to do business in the state on the ground that they had violated the trust law.

Opinion.

The arrangement constituted a combination to fix rates within the meaning of the trust law. The parts of the trust law involved in the decision of this case are constitutional. Whether the sections of the law making guilt of agents *prima facie* proof of the guilt of the companies, and whether in these cases the attorney shall receive an extra fee, are constitutional, is not discussed, for these sections are not invoked in this case. If they were unconstitutional, the result would be the same.

The 73 defendant insurance companies are ousted of all rights, privileges and franchises conferred by the laws of Missouri, and of their certificates to do business under the insurance laws of the state, and compelled to pay the costs of this proceeding.

MONTANA.

CONSTITUTIONAL PROVISION.

ARTICLE XV.

§ 20. No incorporation, stock company, person or association of persons in the state of Montana, shall directly, or indirectly, combine or form what is known as a trust, or make any contract with any person, or persons, corporations, or stock company, foreign or domestic, through their stockholders, trustees, or in any manner whatever, for the purpose of fixing the price, or regulating the production of any article of commerce, or of the product of the soil, for consumption by the people. The legislative assembly shall pass laws for the enforcement thereof by adequate penalties to the extent, if necessary for that purpose, of the forfeiture of their property and franchises, and in case of foreign corporations prohibiting them from carrying on business in the state.

[Adopted, August 17, 1889.]

STATUTE.

PENAL CODE.

CONSPIRACY.

§ 321. Every person, corporation, stock company or association of persons in this state who directly or indirectly, combine or form what is known as a trust, or make any contract with any person or persons, corporations or stock companies, foreign or domestic, through their stockholders, directors, officers, or in any manner whatever, for the purpose of fixing the price or regulating the production of any article of commerce, or the product of the soil for consumption by the people, or to create or carry out any restriction in trade, to limit productions, or increase or reduce the price of merchandise or commodities, or to prevent competition in merchandise or commodities, or to fix a standard or figure whereby the price of any article of merchandise, commerce or produce,

intended for sale, use or consumption, will be in any way controlled, or to create a monopoly of the manufacture, sale or transportation of any such article, or to enter into an obligation by which they shall bind others or themselves not to manufacture, sell, or transport any such article below a common standard or figure, or by which they agree to keep such article or transportation at a fixed or graduated figure, or by which they settle the price of such article so as to preclude unrestricted competition, is punishable by imprisonment in the state prison not exceeding five years, or by fine not exceeding ten thousand dollars, or both. Every corporation violating the provisions of this section, forfeits to the state all its property and franchises, and in case of a foreign corporation it is prohibited from carrying on business in the state.

§ 325. The provisions of this chapter do not apply to any arrangement, agreement or combination between laborers made with the object of lessening the number of hours of labor or increasing wages, nor to persons engaged in horticulture or agriculture, with a view of enhancing the price of their products.

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NEBRASKA.

STATUTES.

LAWS OF 1897, CHAP. 79.

AN ACT to define trusts and conspiracies against trade and business, declaring the same unlawful and void, and providing means for the suppression of the same, and remedies for persons injured thereby, and to provide punishment for violations of this act, and to repeal chapter ninety-one a (91a), entitled "Trusts," of the Compiled Statutes of Nebraska for the year 1895.

Be it enacted by the Legislature of the State of Nebraska:

§ 1. That a trust is a combination of capital, skill or acts by any person or persons to fix the price of any article or commodity of trade, use or merchandise, with the intent to prevent others from conducting or carrying on the same business or selling or trafficking in the same article, use or merchandise, or a combination of capital, skill or acts by two or more persons or by two or more of them for either, any or all of the following purposes: 1. To create or carry out restrictions in trade. 2. To limit or reduce the production or increase or reduce the price of merchandise or commodities. 3. To prevent competition in insurance, either life, fire, accident or any other kind, or in manufacture, making, constructing, transportation, sale or purchase of merchandise, produce or commodities. 4. To fix at any standard or figure, whereby its price to the public shall be in any manner controlled or established upon any article of merchandise, produce or manufacture of any kind intended for sale, use or consumption in this state; to establish any pretended agency whereby the sale of any such article, commodity, merchandise or product shall be covered up, concealed or made to appear to be for the original vendor, for a like purpose or purposes, and to enable such original vendor, producer or manufacturer to control the wholesale or retail price of any such article of merchandise, produce or commodity after the title to the same shall have passed from such vendor or manufacturer. 5. To

make or enter into, carry on or carry out any contract, obligation or agreement of any kind or description by which they shall bind, or have heretofore bound themselves not to sell, dispose of, traffic in or transport any article of merchandise, or commodity, or, article of trade, product, use, merchandise, consumption or commerce, below a common standard figure, card or list price, or by which they shall agree in any manner to keep the price of such article, product, commodity or transportation, at a fixed or graduated figure or price, or by which they shall in any manner establish or settle the price of any article of merchandise, commodity, or of insurance, fire, life or accident, or transportation between them or between themselves and others, or with the intent to preclude, or the tendency of which is to prevent or preclude a free and unrestricted competition among themselves or others or the people generally in the production, sale, traffic or transportation of any such article of merchandise, product or commodity or conducting a like business or by which they shall agree to pool, combine or unite any interest they may have in connection with the sale, production or transportation of any such article of merchandise, product or commodity or the carrying on of any such business, that its price might in any manner be affected thereby.

§ 2. That any and all acts by any person or persons, carrying on, creating, or attempting to create, either directly or indirectly, a trust as defined in section one (1) of this act, are hereby declared to be a conspiracy against trade and business and unlawful, and any person who may be or may become engaged in any such conspiracy, or take part therein, or aid or advise, in its commission, or who shall as principal, manager, director, agent, servant or employe, or in any other capacity knowingly aid or advise, or attempt to carry out, or carry out any of the stipulations, purposes, prices, rates, orders thereunder, or in pursuance thereof, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than twenty-five dollars, nor more than five thousand dollars.

§ 3. That any corporation organized under the laws of this state which violates any of the provisions of this act shall thereby forfeit its charter and franchise, and its corporate existence shall thereupon cease and determine. And for a violation of any of the provisions of this act by any

corporation it shall be the duty of the attorney-general of the state, or county attorney, within his county upon his own motion, to institute suit or quo warranto proceedings in any county in this state in which such corporation was organized or is engaged in transacting business for the forfeiture of its charter rights and franchise and the dissolution of its corporate existence. There shall be taxed against the defendant as part of the cost in any such suit or proceedings, upon the forfeiture of its charter and franchise as provided herein, a fee for the services rendered by the county attorney a sum not less than one hundred dollars (\$100.00), and not more than five hundred dollars (\$500.00), to be fixed by the court rendering the judgment.

§ 4. Every foreign corporation or person not a resident of this state, violating any of the provisions of this act, is hereby denied the right and prohibited from doing any business within this state; and it shall be the duty of the attorney-general and each county attorney within his county, to enforce this provision by injunction, or other proper proceedings, in any county in which such foreign corporation or non-resident person does business, in the name of the state on his relation. And for services rendered by the county attorney, in any such suit or proceedings, the court rendering judgment shall allow a reasonable sum to be taxed against the defendant as part of the costs, in case judgment is rendered against the defendant. For the purpose of obtaining service upon any foreign corporation or non-resident person in any suit or proceedings brought as provided in this act, it shall be sufficient to serve a summons upon any person in any county within the state who may be the agent of said foreign corporation or non-resident person, for the purpose of soliciting business or transacting or doing business for said corporation or non-resident person, at the time when summons is issued upon petition filed against said corporation, or non-resident person, or when summons is served on such agent.

§ 5. In any indictment or information for any offense named in this act it shall be sufficient to state the purposes and effects of the trust or combination in a general way, and that the accused was a member of, aided or advised, or acted with or in pursuance of such trust or combination, without giving its name or description, or how, where or when it was created.

§ 6. In prosecutions under this act it shall be sufficient to prove that a trust or combination, as defined herein or under the common law, exists, and that the defendant belonged to it or acted for or in connection with it, or aided or advised such trust or combination, or attempted to, or did fully carry out any of the stipulations, purposes, prices, rates or orders of any person connected therewith, and it shall not be necessary to make any proof of all the members belonging to such trust, combination or conspiracy, or to prove or produce any article of agreement or any written instrument on which it may have been based, or when, where or how such trust, combination or conspiracy was formed, or that it was evidenced by any written instrument, or came into existence by any agreement of any kind or character, whether in parol or writing.

§ 7. Prosecutions may be brought by any person in the name of the state of Nebraska against any person or persons violating any of the provisions of this act, and it shall be the duty of all county attorneys in their respective counties, to prosecute all criminal suits on behalf of the state arising under the provisions of this act, and there shall be taxed by the court upon conviction of the defendant or defendants, a fee for the county attorney of not less than twenty-five dollars (\$25.00) nor more than one hundred dollars (\$100.00) as services for trying said suit, and same shall be taxed as part of the costs against the defendant or defendants.

§ 8. That any contract or agreement in violation of the provisions of this act shall be absolutely void and not enforceable either in law or equity.

§ 9. Nothing herein contained shall be construed to prevent any assemblies or associations of laboring men from passing and adopting such regulations as they may think proper, in reference to wages and the compensation of labor, and such assemblies and associations shall retain, and there is hereby reserved to them all the rights and privileges now accorded to them by law, anything herein contained to the contrary notwithstanding.

§ 10. Any purchaser of any article, commodity, matter or thing purchased or contracted for within or without this state from any person, firm, corporation or association of persons, or of two or more of them, transacting business contrary to any provision of the preceding sections of this act, shall not be liable for the price or payment of such article, commodity,

matter or thing, and may plead this act as a defense to any suit for such price or payment.

§ 11. Any person who shall be injured in his business, employment or property by any other person, firm, association or corporation by reason of anything forbidden or declared to be unlawful by this act, may have his right of action and sue therefor in any court of competent jurisdiction, and he shall recover the damages by him sustained, and the costs of suit together with a reasonable attorney's fee, to be fixed by the court in every case of recovery, which attorney's fee shall be taxed and collected as part of the costs in the case.

§ 12. In any action brought under any of the provisions of this act the court before whom the same shall be pending may compel any person or persons, partnership, company, association or corporation so proceeded against, or any of the members of any such partnership or corporation, or any director, officer, receiver, trustee, agent, employe or clerk of them, or either of them, to attend, appear and testify in such suit or proceeding, and may compel the production of the books and papers of any such person, persons, partnership, company, association or corporation party to any such proceeding.

No person shall be excused from attending and testifying, or producing books and papers, in any prosecution under this act, for the reason that the testimony, documentary or otherwise, required of him may tend to criminate him, or subject him to a penalty or forfeiture, but no person shall be prosecuted or subject to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he may testify or produce evidence, documentary or otherwise, in any prosecution under the provisions of this act: *Provided*, That no person so testifying shall be exempt from prosecution for perjury committed in so testifying.

§ 13. That the word "person" or "persons" wherever used in this act shall be deemed to include firm, firms, corporation, corporations, partnerships, copartnerships and associations existing under, permitted or authorized by the laws of the United States, this state or any other state, or the laws of any foreign country or territory of the United States.

§ 14. That chapter ninety-one a (91a), entitled "Trusts," of the Compiled Statutes of Nebraska for the year 1895, be and the same is hereby repealed.

LAWS OF 1897, CHAPTER 80.

AN ACT to prohibit combinations among grain elevator men and to prohibit any person, company, partnership, association or corporation engaged in the business of grain dealing or owning or operating any grain elevator, or in the buying, selling, handling, consigning or transporting grain from entering into any understanding, contract, agreement or combination with any other person, company, partnership, association or corporation to form, enter into, maintain or contribute to any trust, pool, combination or association of whatever name, having for any of its objects the prevention of competition among buyers, sellers or dealers in grain not members of, or not doing business through such trust, pool, combination or association, by means of preventing such persons from finding a market for their grain and by intimidating and preventing purchasers and exporters from buying from any person, not a member of and not doing business through such trust, pool, combination or association; and to provide a penalty for the violations of this act.

Be it enacted by the Legislature of the State of Nebraska:

§ 1. That it shall be unlawful for any person, partnership, company, association or corporation engaged in the business of grain dealing or owning or operating any grain elevator, or in buying, selling, handling, consigning, shipping or transporting grain, to enter into any understanding, contract, agreement or combination with any other person, company, partnership, association or corporation, whether within or without this state engaged in a like business, to form, enter into or maintain or contribute money or anything of value to any trust, pool, combination or association of persons, partnerships, companies, associations or corporations of whatever name, which has for any of its objects the prevention of competition among buyers, sellers or dealers in grain, or which by any of its acts, or the acts of any of its officers, members, agents or employees hinders or prevents or tends to hinder or prevent the fullest competition in the purchase, sale or dealing in grain by any person, partnership, company, association or corporation outside of, or not a member of, or not doing business by or through such trust, pool, combination or association, or any of its members, officers, agents or employees; or which has for one of its objects the prevention of competition by requiring or compelling its members not to deal with shippers or dealers in grain not members of such trust, pool, combination or association; or which requires its members to refuse to sell, purchase or consign any grain, to any person, company, partnership or corporation which purchases or receives consignments of

grain from any person, company or corporation not a member of such trust, pool, combination or association, or not doing business through the same or any of its members; or which has for any of its objects the prevention of any person, company, partnership, association or corporation not shipping grain through grain elevators, whether owned or operated by members of such trust, pool, combination or association, or not, from finding purchasers for their grain by boycotting or threatening to boycott such purchasers.

§ 2. That in any case, any person, company, partnership, association, corporation, trust, pool or combination of whatever name shall do, cause to be done, or permit to be done, any act, matter or thing in this act prohibited or declared to be unlawful, such person, partnership, company, association, corporation, trust, pool or combination shall be liable to the person, partnership, company, association or corporation injured thereby for the full amount of damages sustained in consequence of any such violation of the provisions of this act, together with a reasonable attorney fee to be fixed by the court in every case of recovery to be taxed as part of the costs in the case; and the property of any person who may be a member of or interested in any such trust, pool, combination or association, violating the provisions of this act shall be liable for the full amount of such judgment and may be levied upon and sold to satisfy the same.

§ 3. Any person, partnership, company, association or corporation subject to the provisions of this act, or any trust, combination, pool or association, or any director, officer, receiver, trustee, employe, agent or person, acting for or employed by them, or either of them, who shall violate any of the provisions of section 1 of this act shall be declared to be guilty of a felony, and shall upon conviction thereof be fined in any sum not less than one thousand dollars and not exceeding two thousand dollars, and any person, officer, member, agent or employe of any trust, combination, pool or association violating the provisions of section 1 of this act, may in addition to the foregoing fine, be sentenced by the court to a period not exceeding six months to be served in the penitentiary of the state. That half of the fine so imposed shall go to the person or persons who furnish information and evidence on which a conviction shall be founded.

§ 4. Any person who may be aggrieved or injured by section 1 of this act may prosecute the violator in a crim-

inal action by his own attorney, without the intervention of the county attorney, and in case of conviction the court shall allow a reasonable attorney fee to be taxed as costs in the case.

LAWS OF 1897, CHAP. 81.

AN ACT to prevent combinations between fire insurance companies and providing penalties therefor.

Be it enacted by the Legislature of the State of Nebraska:

§ 1. Any combination or agreement made or entered into by or between two or more fire insurance companies insuring property against casualties from the elements, transacting business within this state, or between the officers, agents, or employes of any such companies, relating to the rates to be charged for insurance, the amount of commissions to be allowed agents for procuring insurance, or the manner of transacting the business of fire insurance within this state, is hereby declared to be unlawful, and any such company, officer, or agent violating this provision shall be guilty of a misdemeanor and on conviction thereof, in any court having jurisdiction, shall pay a penalty of not less than one hundred dollars nor more than five hundred dollars for each offense, to be recovered for the use of the permanent school fund in the name of the state.

§ 2. The auditor of the state is hereby authorized to summons, and bring before him for examination under oath, any officer or employee of any fire insurance company transacting business within this state suspected of violating any of the provisions of this act; and on complaint in writing made to him by two or more residents of this state charging any such company under oath upon their knowledge or belief with violating the provisions of this act, said auditor shall summons and cause to be brought before him for examination under oath any officer or employee of said company; and if upon such examination, and the examination of any other witness or witnesses that may be produced and examined, the auditor shall determine that said company is guilty of a violation of any of the provisions of this act or if any officer shall fail to appear, or submit to an examination, after being duly summoned, he shall forthwith issue an order revoking the authority of such company to transact business within this state, and such company shall not thereafter be permitted to transact the business of fire insurance in this state at any time within one year from the time of such revocation.

§ 3. Either party may appeal from any decision of the auditor made in pursuance to this act to the district court of the county wherein such decision was made, within twenty days from the time of the rendition of such decision, by serving a written notice of such appeal on the opposite party and on the auditor of state, and filing with the clerk of said court a good and sufficient bond for the payment of all costs made on appeal in case the decision shall be affirmed. On such appeal the district court shall try the case *de novo* as equitable causes are tried on such evidence as may be produced by either party and may reverse, modify, or affirm the decision or order of the auditor.

§ 4. The statements and declarations made or testified to by any such officer or agent in the investigation before the auditor or upon the hearing and trial before the district court as provided for in sections 2 and 3 of this act, shall not be used against any person making the same in any criminal prosecution against him.

CASE CONSTRUING STATUTE.

Mollyneaux v. Wittenberg et al.

39 Neb., 547.

March 6, 1894.

Statute construed.

"It shall be unlawful for any person * * * engaged in the manufacture or sale of any article of commerce or consumption * * * or dealing in any natural product to enter into any contract * * * with any other person * * * engaged in the manufacturing, selling or dealing in the same * * * whereby a common price shall be fixed for any such product or whereby the manufacture or sale thereof shall be limited or the amount * * * of such product to be sold or manufactured shall be determined or whereby any one or more of the combining or contracting parties shall suspend or cease the sale or manufacture of such products." (Laws of 1889, Chap. 69.)

Statement.

Plaintiff sold defendant a village lot, providing in the deed that said lot should not be used for hotel purposes for two years. Defendant within two years used the lot for hotel purposes. Plaintiff brings suit for damages. Defendant

claims that the restriction was in violation of the foregoing statute, and was therefore void.

Opinion.

“The act applies to persons ‘engaged in the manufacture or sale of any article of commerce or consumption, or dealers in any natural product,’ and prohibits them from entering into contracts, agreements, etc. The contract in this case, not to use the premises for hotel purposes is clearly not covered by the terms or meaning” of the statute above mentioned.

Plaintiff can recover damages.

NEW JERSEY.

COMMON-LAW DECISIONS.

John P. Stockton, Attorney-General of New Jersey, at the Relation of John R. Miller et al. v. The American Tobacco Co. et al.

55 N. J. Eq., 352.

February, 1897.

Statement.

Five companies of New York, North Carolina and Virginia, were at one time, independently of each other, manufacturing and selling paper cigarettes. In 1889, under the laws of New Jersey they formed the American Tobacco Company, and its capital stock was to be \$25,000,000. The five companies above mentioned turned their property over to this corporation and received its stock in payment therefor. The American Tobacco Company did no business in New Jersey except to sell its cigarettes there through jobbers under agreement that the jobbers should sell cigarettes for no other manufacturer. By this means the American Tobacco Company has monopolized ninety-five per cent of the paper cigarette business of the United States. Plaintiff seeks to enjoin the American Tobacco Company from doing business in a manner to restrict trade.

Opinion.

If the corporation was not legally formed, the proper remedy is not in equity, but at law to declare its charter void. If the corporation was legally formed, it has the same right to do business as an individual, and clearly an individual has the right to make any contract the defendant has made.

The bill is dismissed.

Trenton Potteries Co. v. Richard C. Oliphant et al.

56 N. J. Eq., 680.

March 19, 1898.

43 At. Rep., 723.

July 7, 1899.

Statement.

Plaintiff, it is alleged, is a corporation formed for the purpose of buying enough of the manufactories of sanitary ware to control the market in this article. To this end it pur-

chased a manufactory in which defendants were interested, and made a contract with defendants whereby they agreed to manufacture no pottery ware anywhere in the United States except in Nevada and Arizona for fifty years. They are now breaking this contract and plaintiff brings a bill in equity to have them enjoined.

Opinion of the Court of Chancery.

The prayer for the enforcement of this contract is a request that equity shall aid in carrying into effect a scheme which, in all its parts, tended to secure to the complainant company such an undue control of the market of a necessary of life as is against public policy, and the request should not be granted.

Opinion of Court of Errors and Appeals.

As the legislature had given corporations power to acquire the property and control of other corporations, and this carried with it the right to make contracts reasonably required to protect the purchaser in the enjoyment of the business purchased, the legislature had settled the question of public policy, and the court had to decide only whether the restraint was reasonably required to protect the purchaser. Held that a reasonable restraint would extend only to the territory covered by the seller's business; that in such territory the contract would be specifically enforced, but that as to the rest of the territory covered by the contract no relief would be granted.

As to the state of New Jersey the injunction will be granted, but as it is not proved that defendants' business which was sold extended into the rest of the territory covered by the contract, as to that, it will be refused.

NEW MEXICO.

STATUTE.

COMPILED LAWS.

TRUSTS, POOLS AND COMBINATIONS.

§ 1292. Every contract or combination between individuals, associations or corporations, having for its object or which shall operate to restrict trade or commerce or control the quantity, price or exchange of any article of manufacture or product of the soil or mine, is hereby declared to be illegal.

Every person, whether as individual or agent or officer or stockholder of any corporation or association, who shall make any such contract or engage in any such combination, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine not exceeding one thousand dollars nor less than one hundred dollars, and by imprisonment at hard labor not exceeding one year, or until such fine has been paid.

§ 1293. Every person who shall monopolize or attempt to monopolize, or combine or conspire with any other person or persons to monopolize any part of the trade or commerce of this territory, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine not exceeding one thousand dollars or by imprisonment not exceeding one year, or by both said punishments in the discretion of the court.

§ 1294. All contracts and agreements in violation of sections one thousand two hundred and ninety-two and one thousand two hundred and ninety-three shall be void, and any purchaser of any commodity from any individual, corporation or association transacting business in violation of this act shall not be liable for the payment for such commodity.

§ 1294a. This act shall take effect from and after its passage and publication three times in the "Daily New Mexican."

[Passed in 1891.]

NEW YORK.

STATUTES.

PENAL CODE.

CONSPIRACY.

§ 168. **Conspiracy defined.**—If two or more persons conspire, either * * *

6. To commit any act injurious to the public health, to public morals, or to trade or commerce, or for the perversion or obstruction of justice, or of the due administration of the laws;

Each of them is guilty of a misdemeanor.

LAWS OF 1897, CHAP. 384.

§ 7. **Combinations abolished.**—No domestic stock corporation and no foreign corporation doing business in this state shall combine with any other corporation or person for the creation of a monopoly or the unlawful restraint of trade or for the prevention of competition in any necessary of life.

LAWS OF 1899, CHAP. 690.

AN ACT to prevent monopolies in articles or commodities of common use, and to prohibit restraints of trade and commerce, providing penalties for violations of the provisions of this act, and procedure to enable the attorney-general to secure testimony in relation thereto.

The People of the State of New York, represented in Senate and Assembly, do enact as follows :

§ 1. Every contract, agreement, arrangement or combination whereby a monopoly in the manufacture, production or sale in this state of any article or commodity of common use is or may be created, established or maintained, or whereby competition in this state in the supply or price of any such article or commodity is or may be restrained or prevented, or whereby for the purpose of creating, establishing or maintaining a monopoly within this state of the

manufacture, production or sale of any such article or commodity, the free pursuit in this state of any lawful business, trade or occupation is or may be restricted or prevented, is hereby declared to be against public policy, illegal and void.

§ 2. Every person or corporation, or any officer or agent thereof, who shall make or attempt to make or enter into any such contract, agreement, arrangement or combination, or who within this state shall do any act pursuant thereto, or in, toward or for the consummation thereof, wherever the same may have been made, is guilty of a misdemeanor, and on conviction thereof shall, if a natural person, be punished by a fine not exceeding five thousand dollars, or by imprisonment for not longer than one year, or by both such fine and imprisonment; and if a corporation, by a fine of not exceeding five thousand dollars.

§ 3. The attorney-general may bring an action in the name and in behalf of the people of the state against any person, trustee, director, manager or other officer or agent of a corporation, or against a corporation, foreign or domestic, to restrain and prevent the doing in this state of any act herein declared to be illegal, or any act, in, toward or for the making or consummation of any contract, agreement, arrangement or combination herein prohibited, wherever the same may have been made.

§ 4. Whenever the attorney-general has determined to commence an action or proceeding under this chapter, he may present to any justice of the supreme court, before beginning such action or proceeding under this chapter, an application in writing, for an order directing the persons mentioned in the application to appear before a justice of the supreme court, or a referee designated in such order, and answer such questions as may be put to them or to any of them, and produce such papers, documents and books concerning any alleged illegal contract, arrangement, agreement or combination in violation of this chapter; and it shall be the duty of the justice of the supreme court, to whom such application for the order is made, to grant such application. The application for such order made by the attorney-general may simply show, upon his information and belief that the testimony of such person or persons is material and necessary. The provisions of article one, of title three, of chapter nine of the code of civil procedure, relating to the application for

an order for the examination of witnesses before the commencement of an action and the method of proceeding on such examinations shall not apply except as herein prescribed. The order shall be granted by the justice of the supreme court to whom the application has been made, with such preliminary injunction or stay as may appear to such justice to be proper and expedient, and shall specify the time when and place where the witnesses are required to appear, and such examination shall be held either in the city of Albany, or in the judicial district in which the witness resides, or in which the principal office, within this state, of the corporation affected, is located. The justice or referee may adjourn such examination from time to time and witnesses must attend accordingly. The testimony of each witness must be subscribed by him, and all must be filed in the office of the clerk of the county in which such order for examination is filed.

§ 5. The order for such examination must be signed by the justice making it, and the service of a copy thereof, with an endorsement by the attorney-general, signed by him, to the effect that the person named therein is required to appear and be examined at the time and place, and before the justice or referee specified in such endorsement, shall be sufficient notice for the attendance of witnesses. Such endorsement may contain a clause requiring such person to produce on such examination all books, papers and documents in his possession, or under his control, relating to the subject of such examination. The order shall be served upon the person named in the indorsement aforesaid, by showing him the original order, and delivering to and leaving with him, at the same time, a copy thereof indorsed as above provided, and by paying or tendering to him the fee allowed by law to witnesses subpoenaed to attend trials of civil actions in a court of record in this state.

§ 6. No person shall be excused from answering any questions that may be put to him, or from producing any books, papers or documents, on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him, but no person shall be prosecuted in any criminal action or proceedings, or subjected to any penalty or forfeiture, for or on account of any transaction, matter or thing concerning which he may testify, or produce evidence,

documentary or otherwise, before said justice or referee appointed in the order for his examination, or in obedience to the subpoena of the court, or referee acting under such order, or either of them or in any such case or proceeding.

§ 7. A referee appointed as provided in this act possesses all the powers and is subject to all the duties of a referee appointed under section ten hundred and eighteen of the code of civil procedure, so far as practicable, and may punish for contempt a witness duly served as prescribed in this act for non-attendance or refusal to be sworn or to testify, or to produce books, papers and documents according to the direction of the indorsement aforesaid, in the same manner, and to the same extent as a referee appointed to hear, try and determine an issue of fact or of law.

§ 8. Chapter three hundred and eighty-three of the laws of eighteen hundred and ninety-seven is hereby repealed.

§ 9. This act shall take effect immediately.

[Became a law May 25, 1899, with the approval of the governor.]

CASES CONSTRUING STATUTES.

The People of the State of New York v. Carson J. Sheldon et al.

139 N. Y., 251.

October 3, 1893.

Statute construed.

“If two or more persons conspire, either to commit any act injurious to the public health, or to public morals, or to trade or commerce, * * * each of them is guilty of a misdemeanor.” (New York Penal Code, sec. 168.)

Statement.

Defendants agreed to sell no coal except at prices fixed by a majority of them. They are prosecuted for conspiracy.

Opinion.

“The trial judge charged the jury: If the defendants entered into the organization agreement for the purpose of controlling the price of coal and managing the business of the sale of coal, so as to prevent competition in price between the members of the exchange, the agreement was illegal, and if you find that this was their intent, and that the price of coal was raised in pursuance of the agreement to effect its object, the crime of conspiracy is established.” This was a correct charge.

Defendants were convicted.

Harvey F. Drake et. al. v. Steverin Siebold.*81 Hun., 178.**October, 1894.***Statement.**

Nearly all the coal dealers in Rochester, N. Y., were members of a combination known as The Rochester Coal Exchange, which from time to time issued schedules of prices at which coal should be sold by all of its members. The parties to this action were members of this association. A contract was entered into between plaintiffs and defendant whereby plaintiffs were to supply the defendant with large quantities of coal at stated times, the price of which was to be the schedule price set by the said association at the time the coal was delivered. Defendant received part of the coal, and then refused to take any more, and plaintiffs bring this suit to recover damages for the breach of contract.

Opinion.

The object of the coal exchange was to prevent competition in the sale of a prime necessary. The combination between the dealers, followed by overt acts, was a conspiracy within the meaning of the statute, which provides that when two or more persons conspire "to commit any act injurious * * * to trade or commerce," they are guilty of a misdemeanor. (Penal Code, sec. 168, subd. 6.) The object of the association was illegal, and the contract on which this action is based was in furtherance of that object and is void.

The plaintiffs can not recover.

The National Harrow Co. v. E. Bement & Sons.*21 N. Y. App. Div., 290.**October, 1897.***Statute construed.**

"No domestic stock corporation and no foreign corporation doing business in this state shall combine with any other corporation or person for the creation of a monopoly or the unlawful restraint of trade, or for the prevention of competition in any necessary of life." (L. 1892, ch. 688, amended by L. 1897, ch. 384.)

Statement.

Plaintiff corporation was organized ostensibly to manufacture and deal in harrows. Its stock was issued for patents assigned to it. It manufactured no harrows itself, but

obtained eighty-five patents and made contracts with those from whom they were purchased to continue manufacturing the harrows under licenses, the corporation reserving the right to fix the prices at which the harrows should be sold. Defendant, who held a license to make harrows, broke the contract, and this suit is to enforce it. Defendant claims that the sale of its patent and the receiving back a license is void because it was with a view to giving the plaintiff a monopoly.

Opinion.

"The section is a disjunctive one and prohibits corporations from combining to accomplish three things: (1) 'Creation of a monopoly;' (2) 'the unlawful restraint of trade;' and (3) 'the prevention of competition in any necessary of life.'" It follows that the contract in question falls within the terms of this statute, and is void.

Plaintiff can not recover.

In the Matter of the Application of the Attorney-General for an Order for the Examination of Witnesses under the Provisions of Chapter 383 of the Laws of 1897.

The Attorney-General, appellant; Robert M. Olyphant, respondent.

21 Misc. Rep., 101.

July, 1897.

22 App. Div., 285.

November, 1897.

155 N. Y., 441.

April, 1898.

Statement.

An order was granted by Judge Chester, commanding Robert M. Olyphant and others to appear before a referee and testify concerning an alleged trust. A motion in the Supreme Court to vacate the order was granted. The attorney-general appealed to the Appellate Division of the Supreme Court, and was there defeated. He then carried the case to the Court of Appeals, and was again defeated.

Statute construed.

Chapter 383, of the Laws of 1897, makes combinations in restraint of trade criminal; and to enforce the law provides as follows:

"Whenever the attorney-general deems it necessary or proper to procure testimony before beginning any action or proceeding under this chapter, he may present to any justice

of the Supreme Court an application in writing for an order directing such persons as the attorney-general may require to appear before a justice of the Supreme Court, or a referee designated in such order, and answer such relevant and material questions as may be put to them, concerning any alleged illegal contract * * * in violation of this chapter. * * * The testimony given by a witness in a proceeding or examination under this act shall not be given in evidence against him in any criminal action or proceeding, nor shall any criminal action or proceeding be brought against such witness on account of the testimony so given by him, nor shall any person be excused from answering any questions that may be put to him on the ground that it may tend to convict him of a violation of the provisions of this act.

Opinion of Supreme Court.

1. The administrative, judicial and executive departments must be kept distinct. One man can not perform duties under two of these departments. For a judge to order witnesses to give testimony solely to aid the attorney-general is to do an administrative act. The law giving such power is unconstitutional.

2. "An attempt has apparently been made in the statute in question to give immunity to the witnesses." The language of the statute "comes far short * * * from giving absolute immunity to the witness from prosecution." Hence, this law conflicts with our constitution where it says:

"No person * * * shall be compelled in any criminal case to be a witness against himself." Therefore it is void.

3. The order summoning witnesses must be set aside.

Opinion of the Appellate Division.

1. In granting the order to call witnesses the judge has to determine whether it is necessary. Therefore, the act is judicial, and the law granting the power is constitutional.

2. The application of the attorney-general did not state facts enough. The order was rightly vacated.

Opinion of the Court of Appeals.

A case like this is not appealable to this court; therefore the questions involved will not be determined.

John G. Walsh and G. Wells Walsh v. John Dwight et al.

40 N. Y. App. Div., 513.

May, 1899.

Statute construed.

Every contract or combination in the form of trust or otherwise, made after the passage of this act, whereby competition in the state of New York in the supply or price of any article or commodity of common use in the said state for the support of life and health may be restrained or prevented, for the purpose of advancing prices, is hereby declared illegal. (Chap. 716, Laws 1893.)

Statement.

Defendants are manufacturers of Dwight's Cow Brand Saleratus and Soda. They agreed with jobbers and dealers to give them a discount on prices if they would not sell any saleratus for less than the price fixed on Dwight's Cow Brand. Plaintiffs, rival manufacturers of saleratus, by this scheme lost much trade, as they claim, \$50,000 worth; to recover damages this action is brought.

Opinion.

Ingraham, Judge, speaking for the court says: "This act did not have the effect of preventing a manufacturer from fixing the price at which his article should be sold, or from making an agreement with these persons who acted as the jobbers or retailers of his manufactured articles that they should deal exclusively in his merchandise, or would not sell the merchandise of other persons at a less price than that for which his product was sold. The act was evidently intended to prevent manufacturers or dealers in any article or commodity of common use from combining together to advance the price of such article or commodity by which the supply or price of the same would be restricted or regulated."

Plaintiffs can not recover.

COMMON-LAW DECISIONS.

Diamond Match Co. v. Roeber.

106 N. Y., 473.

1887.

Statement.

A contract existed between plaintiff and defendant, whereby for a sufficient consideration defendant agreed not to engage in the manufacture or sale of matches, except as

employee of plaintiff, for ninety-nine years, except in the state of Nevada and territory of Montana. Defendant has now engaged in the manufacture of matches in New Jersey and sale of them in New York not in behalf of plaintiff; and this suit is brought to have him enjoined from breaking his contract.

Opinion.

Judge Andrews delivering the opinion of the court said: "The covenant in the present case is partial and not general. It is practically unlimited as to time, but this, under the authorities, is not an objection, if the contract is otherwise good. It is limited as to space since it excepts the state of Nevada and the territory of Montana from its operation, and therefore is a partial and not a general restraint. * * * We are of opinion that the covenant, being supported by a good consideration, and constituting a partial and not a general restraint, and being in view of the circumstances disclosed, reasonable, is valid."

Injunction is granted.

John L. Leslie v. Jacob Lorillard et al.

110 N. Y., 519.

October, 1888.

Statement.

Plaintiff is a stockholder in the Old Dominion Steamship Company of Delaware. This company was running steamships between the port of New York and certain ports in Virginia. It agreed to pay Lorillard and a company which he controlled a certain sum of money if they would not run any ships to compete with it. Plaintiff brings suit to have this contract set aside and to prevent defendants from recovering money due on the contract.

Opinion.

It is not always that a contract to prevent competition is against public policy. It is sometimes a benefit to the public to keep competition from becoming too strong. In the present case the contract does not restrain competition to an extent to make it illegal.

The contract is held valid.

John Good v. William S. Daland et al.*121 N. Y., 1.**April 15, 1890.***Statement.**

A large number of corporations were members of the United States Cordage Manufacturers' Association of New York. The members of this association authorized defendant Daland to make a contract with plaintiff, whereby plaintiff agreed to allow the members of the association, and them only, to use all the patents he had or should obtain on machinery for their business, and each of the members of the association was to pay plaintiff a certain per cent of what it received for the goods it sold. This suit is brought to recover money due under this agreement from a member of the association.

Opinion.

The articles being patented, plaintiff could do whatever he pleased in regard to them. He could decline to make them himself, and keep others from making them, if he chose, without any regard to the interests of the public. He has not done more than that, at most, in this case.

The contract is held valid.

The People of the State of New York v. The North River Sugar Refining Co.*121 N. Y., 582.**June 24, 1890.***Statement.**

The stockholders of defendant and many other sugar refining companies handed their stock over to a common board of trustees and received in return trust certificates. Said board managed the business of all the companies, and profits were distributed *pro rata* to the holders of trust certificates.

Plaintiff brings suit to take away defendant's charter.

The company claims that the acts of its stockholders can not be imputed to the company, but if they can be, they are legal.

Opinion of Circuit Court.

Barrett, J.: "According to the act of 1848, the signers of the original certificate of incorporation and their successors 'are a body politic and corporate.' Who are the successors of

these original signers? The shareholders of course. The entire body of shareholders thus constitute the corporation. * * * It is really an association of persons, and the word corporation, is but a collective name for the incorporators or members. * * * And so the acts of the collective body are the acts of the corporation, and, if unlawful, will work a forfeiture." The acts are unlawful for two reasons:

1. They constitute the corporation a partner and a corporation is not allowed by law to enter into partnership.

2. "Any combination, the tendency of which is to prevent competition in its broad and general sense and to control, and thus at will enhance prices to the detriment of the public, is a legal monopoly," and is against public interest. "Benefit to the country at large, form the objects for which the corporations are created, constitute the consideration, and in most cases the sole consideration of the grant" of corporate power. It, therefore, follows logically, that when these objects are perverted, when the country suffers injury instead of receiving benefit, the state because of such misuser, may withdraw the privileges and resume its franchises. * * * Fortunately the law is able to protect itself against abuses of the privileges which it grants, and, while further legislation * * * may be suitable to check and punish exceptional wrongs, yet there is existing * * * 'plain law and plain sense' enough to deal with corporate abuses like the present."

Opinion of General Term of Supreme Court.

The acts of the stockholders were in this case the acts of the corporation. "The defendant had disabled itself from exercising its functions and employing its franchise as it was intended it should by the act under which it was incorporated, and had, by the action which was taken, placed itself in complete subordination to another and different organization to be used for an unlawful purpose, detrimental and injurious to the public; * * * it had become a party to a combination, in part, at least, designed to create a monopoly, and exact from the public prices which could not otherwise be obtained. This was a subversion of the object for which the company was created, and it authorized the attorney-general to maintain and prosecute this action to vacate and annul its charter.

Opinion of Court of Appeals.

FINCH, J.: "The abstract idea of a corporation, the legal entity, the impalpable and intangible creation of human thought is itself a fiction, and has been appropriately described as a figure of speech. It serves very well to designate in our minds the collective action and agency of many individuals as permitted by the law; and the substantial inquiry always is what in a given case has been the collective action and agency. As between the corporation and those with whom it deals the matter of its exercise usually is material, but as between it and the state, the substantial inquiry is only what that collective action and agency has done, what it has, in fact, accomplished, what is seen to be its effective work, what has been its conduct. It ought not to be otherwise. The state gave the franchise, the charter, not to the impalpable, intangible and almost nebulous fiction of our thought, but to the corporators, the individuals, the acting and living men to be used by them, to redound to their benefit, to strengthen their hands and add energy to their capital. If it is taken away, it is taken from them as individuals and corporators, and the legal fiction disappears. The benefit is theirs, the punishment is theirs, and both must attend and depend upon their conduct; and when they all act, collectively, as an aggregate body, without the least exception, and so acting reach results and accomplish purposes clearly corporate in their character and affecting the vitality, the independence, the utility, of the corporation itself, we can not hesitate to conclude that there has been corporate conduct which the state may review, and not be defeated by the assumed innocence of a convenient fiction."

In this state corporations must remain single as they were created, or all form into one corporation as provided by statute. There can be no partnership of separate and independent corporations. The foregoing combination indirectly forms such partnership, and is, therefore, illegal.

Judgment of dissolution granted.

Strait et al. v. National Harrow Co. et al.

18 N. Y. Supp., 224.

January, 1891.

Statement.

Defendant corporation made contracts with nearly all the manufacturers of spring-tooth harrows and owners of patents

on them in the United States, whereby defendant corporation was to acquire all rights to their patents, and receive promises that they would not for fifty years be interested in the manufacture of any harrow except by license of defendant, and they were to receive in payment stock of defendant corporation. It was to license each manufacturer to continue making the same harrows that it was making at the time of the contract. Defendant corporation was to have the sole power to fix the schedule of prices at which harrows should be sold. Plaintiffs agreed to turn in their business and take stock in the same way the others did; but now, very little having been done under the contract, plaintiffs seek to have it set aside as void, because against public policy.

Opinion.

The contract provides for a monopoly of the spring-tooth harrow business long after the patents have expired. It is unnecessary to consider what would be the law if the monopoly were to last only during the life of the patents. The agreement is for restraint of trade in an article of common use and it should not be upheld. While the contract is not wholly performed, the parties may withdraw and the courts will aid them. Plaintiffs should be granted relief.

De Witt Wire Cloth Co. v. New Jersey Wire Cloth Co.

9 Ry. and Corp. L. J., 314.

February, 1891.

Statement.

Three corporations and two partnerships, engaged in the manufacture and sale of wire cloth, entered into an agreement to regulate the price of that article. They agreed not to sell at a lower price than that fixed by the association.

Opinion.

The court of common pleas in the city of New York held this contract illegal, and refused to aid the parties in anyway when they had trouble among themselves over the contract.

Sylvanus Judd v. Dennis Harrington.

139 N. Y., 105.

October, 1893.

Statement.

Certain parties who were brokers and dealers in sheep and lambs executed an agreement, by its terms organizing an association for the purpose "of guarding and protecting their

business interests from loss by unreasonable competition," by which they agreed to pool their commissions, except such as should be agreed to be paid to a certain butchers' association. The association so formed entered into an agreement with the butchers' association whereby the brokers were to sell only to the butchers, and the butchers to buy only of the brokers belonging to their respective associations.

Opinion.

In an action brought by plaintiff as treasurer of the brokers' association against one of its members to recover damages stipulated therein for a breach of the agreement, it was held that the two agreements were to be taken and considered together; that they were intended to control the market, fix the price and destroy competition, and were therefore void. The public might be prejudiced; but whether they were so in fact was not material.

Ernest St. George Lough et al. v. A. Emilius Outerbridge et al.

143 N. Y., 271.

October, 1894.

Statement.

Defendant's regular charge for carrying freight from New York to Barbadoes island was forty cents per barrel; but during the week in which El Callao, a rival boat, was loading, defendant offered to carry freight for twenty-five cents per barrel, provided the shipper would agree to send all his freight that week by its line. Plaintiff demanded that defendant carry his freight for twenty-five cents a barrel during said week, but would not agree to ship all his goods on defendant's boat. Defendant refused to carry at twenty-five cents, and plaintiff brings suit to compel him, on the ground that defendant's condition need not be complied with because it tends to create an illegal monopoly.

Opinion.

Forty cents a barrel was a fair price, and a common carrier has a right to exact a fair price. If a carrier offers to carry freight for less than a fair price upon certain conditions, in order to be entitled to the lower rate the shipper must comply with the required conditions. The means employed by the defendant are lawful; and one has a right to use all lawful means to secure custom for himself.

Order refused.

The People of the State of New York v. The Milk Exchange.*145 N. Y., 267.**March, 1895.***Statement.**

About ninety dealers in milk and cream in New York City formed defendant corporation. This corporation gave the directors power to fix the prices to be paid by these dealers for milk and cream; the members were not to pay any other price than that fixed by the board. The people bring this suit to have the corporation dissolved, on the ground that it has formed an unlawful combination and conspiracy in restraint of trade.

Opinion.

That a combination to effect such a purpose is inimical to the interests of the public, and that all contracts designed to effect such an end are contrary to public policy, and therefore, illegal, is too well settled by adjudicated cases to be questioned at this day.

Order of dissolution granted.

NORTH CAROLINA.

CONSTITUTIONAL PROVISION.

Article I.

§ 31. Perpetuities and monopolies are contrary to the genius of a free State, and ought not to be allowed.

STATUTES.

LAWS OF 1889, CHAP. 374.

AN ACT to prohibit trusts in the State of North Carolina, and to provide for the punishment of persons connected with them.

The General Assembly of North Carolina do enact:

§ 1. That all combinations and trusts as defined by this act are unlawful, and dangerous to the liberty of the people, and are hereby forbidden to be formed or carried on in this state.

§ 2. That a trust is an arrangement, understanding or agreement, either private or public, entered into by two or more persons or corporations for the purposes of increasing or reducing the price of the shares of stock of any company or corporation, or of any class of products, materials or manufactured articles, beyond the price that would be fixed by the natural demand for or the supply of such shares, products, materials or manufactured articles; and any attempt to carry out such purpose shall be evidence that such arrangement, understanding or agreement exists.

§ 3. That any persons, company or corporation who shall form, or attempt to form, a trust in this state, or the agent or representative of any trust in any state or county, who shall attempt to carry on operations in this state, shall be guilty of a misdemeanor, and upon conviction may be fined not more than \$10,000 or may be imprisoned not more than ten years for each offense.

§ 4. That any person, company or corporation who enter into an arrangement, understanding or agreement not to

mine, manufacture, buy, sell or transport more than a certain specific amount of any goods, products or commodities within a specified time, will have violated section three of this act and will be liable to indictment therefor; and any person, company or corporation who give bond or make a forfeit of any kind not to break such arrangement, understanding or agreement shall be guilty of a misdemeanor, and on conviction thereof shall be fined or imprisoned, or both, in the discretion of the court.

§ 5. That any merchant, broker, manufacturer or dealers in raw materials of any kind, or the agent of such persons, who shall sell any particular class of goods, raw materials or manufactured articles for less than actual cost, for the purpose of breaking down competitors, shall be guilty of a misdemeanor, and upon conviction may be fined or imprisoned, or both, in the discretion of the court: *Provided*, That nothing contained in this act shall operate or be construed so as to forbid or prevent any person or persons who desire and intend to purchase any article or commodity for his or their own use or consumption, from combining or otherwise lawfully acting so as to protect or help themselves from imposition in the cost or purchase price of such articles or commodities as they or either of them may design or intend to use or consume.

§ 6. That this act shall be in full force and effect from and after the first day of May of the year one thousand eight hundred and eighty-nine.

Ratified the 11th day of March, A. D. 1889.

LAWS OF 1899, CHAP. 666.

POOLS, TRUSTS AND CONSPIRACIES UNLAWFUL COMBINATIONS.

AN ACT providing for the punishment of pools, trusts and conspiracies, and as to evidence and prosecution in such cases.

The General Assembly of North Carolina do enact:

§ 1. Any corporation organized under the laws of this or any other state or country for transacting or conducting any kind of business in this state, or any partnership or individual or other association of persons whatsoever, who shall create, enter into, become a member of or a party to any pool, trust, agreement, combination, confederation or understanding with any other corporation, partnership, individual

or any other person or association of persons, to regulate or fix the price of any article of merchandise or commodity, or shall enter into, become a member of or a party to, any pool, agreement, contract, combination or confederation to fix or limit the amount or quantity of any article, commodity or merchandise to be manufactured, mined, produced or sold in this state shall be deemed and adjudged guilty of a conspiracy to defraud, and be subject to penalties as provided in this act.

§ 2. It shall not be lawful for any corporation to issue or to own trust certificates, or for any corporation, agent, officer or employee, or the directors or stockholders of any corporation to enter into any combination, contract or agreement with any person or persons, corporation or corporations, or with any stockholder or director thereof, the purpose and effect of which combination, contract or agreement shall be to place the management or control of such combination or combinations, or the manufactured product thereof in the hands of any trustee or trustees, with the intent to limit or fix the price or lessen the production and sale of any article of commerce, use or consumption, or to prevent, restrict or diminish the manufacture or output of any such article: *Provided*, That nothing herein contained shall affect the present investments of charitable or educational institutions.

§ 3. Any corporation or company, individual, firm or association violating any of the provisions of this act shall forfeit one hundred dollars for each day it shall continue to do so, to be recovered by an action in the name of the state, at the relation of the solicitor, moneys thus recovered to go into the revenue fund of the county in which the cause accrues.

§ 4. Any contract or agreement in violation of any provision of the preceding sections of this act shall be absolutely void.

§ 5. Any corporation created or organized by or under the laws of this state, which shall violate any provision of the preceding sections of this act shall thereby forfeit its corporate rights and franchises, and its corporate existence shall, upon proper proof being made thereof in any court of competent jurisdiction in this state, be by the court declared forfeited, void and of non-effect, and shall thereupon cease

and determine; and it shall be the duty of the clerk of said court to certify the decree thereof to the secretary of state, who shall take notice and be governed thereby as to the corporate papers of said corporation.

§ 6. This act shall not apply to agricultural products while in the hands of the producer, nor to the lumber interests of the state, neither shall it prevent cotton or woolen mills from regulating the amount of their output or selling the same through an agent.

§ 7. In any indictment or information for any offense named in this act it shall be sufficient to state the purposes and effects of the trust or combination and that the accused was a member of, acted with or in pursuance of it, without giving its name or description or how or where it was created.

§ 8. In proceedings under this act it shall be sufficient to prove that a trust or combination as herein defined exists and that the defendant belonged to it or acted for or in connection with it, without proving all members belonging to it or producing or proving any articles of agreement or any written instrument on which it may have been based, or that it was evidenced by any written instrument at all, and a preponderance of evidence shall be sufficient to authorize a verdict and judgment for the state.

§ 9. In all suits instituted under this act to forfeit charters or corporations, where a judgment of forfeiture is obtained and the cause is not appealed to the supreme court, the superior court rendering such judgment shall allow the solicitor or prosecuting attorney prosecuting the suit a fee of not less than one hundred dollars nor more than five hundred dollars, to be paid out of the assets of said corporation: *Provided*, That in case such cause is appealed to the supreme court and the payment of forfeiture affirmed, the attorney-general shall be entitled to one-half of the fee so allowed by the superior court for his services in prosecuting said cause in the appellate court.

§ 10. That this act shall not apply to any wholesale or retail merchant or jobber doing business in this state who is not a party to or interested in a trust nor the agent of a trust, nor shall it apply to any fishing, trucking or canning industry in this state, nor to any persons, firms or corporation engaged therein. But no person or firm shall be deemed to

be the agent of a trust because of the sale of trust manufactured goods or products when the said person or firm buys said goods or products and sells the same as his or its own property.

§ 11. That all laws in conflict with the provisions of this act are hereby repealed.

§ 12. That this act shall be in force from and after its ratification.

Ratified the 8th day of March, A. D. 1899.

NORTH DAKOTA.

CONSTITUTIONAL PROVISION.

ARTICLE 7.

§ 146. Any combination between individuals, corporations, associations or either, having for its object or effect the controlling of the price of any product of the soil or any article of manufacture or commerce, or the cost of exchange or transportation, is prohibited and hereby declared unlawful and against public policy; and any and all franchises heretofore granted or extended, or that may hereafter be granted or extended in this state, whenever the owner or owners thereof violate this article shall be deemed annulled and become void.

[Adopted, Oct. 1, 1889.]

STATUTES.

REVISED CODES, CHAP. 51.

TRUSTS, POOLS AND COMBINATIONS REGARDING GRAIN AND STOCK.

§ 7480. Combinations among dealers in produce.—

Every person who is a dealer in, or buyer of grain, hogs, cattle or stock, of any kind, and who enters into any contract, agreement, understanding or combination with any other person, not his partner, who is a like dealer or buyer, either:

1. For the pooling of the price of grain, hogs, cattle or stock, of any kind, between himself and such other person, or others; or,

2. For the division between them of the aggregate or net proceeds of the earnings or profits of such dealers or buyers or any portion thereof; or,

3. For fixing or establishing the price which such dealers or buyers shall pay or offer for grain, hogs, cattle or stock of any kind,

Is guilty of a misdemeanor.

§ 7481. **Combinations to fix prices.**—Every person who creates, enters into or becomes a member of or party to any pool, trust, combination or confederation, or makes or enters into any contract, agreement or understanding therefor, with another person, either:

1. To limit or fix the price of any commodity, article or merchandise; or,

2. To limit or fix the amount or quantity of any commodity, article or merchandise to be manufactured, mined, produced or sold in this state,

Is guilty of misdemeanor.

§ 7482. **Punishment.**—Every corporation whether organized under the laws of this or any other state or country, and doing business in this state, and every partnership or association of individuals so doing business, which shall violate any of the provisions of the last two sections, is guilty of a misdemeanor, and upon conviction thereof, is punishable by a fine of not less than one and not exceeding twenty per centum of the capital stock of such corporation or of the amount invested in such company, firm or association.

§ 7483. **Violations by corporate officers.**—Every person who, as president, manager, director, stockholder, receiver or agent, or other person of any corporation, on behalf of such corporation as is mentioned in the last section, or as a member of any partnership or association of individuals, violates any of the provisions of this chapter, is guilty of a misdemeanor.

§ 4784. **No privilege from testifying.**—No person not a defendant on trial shall be excused or claim any immunity from testifying, or producing his records, contracts, books or papers, or the records, contracts books or papers in his possession or under his control belonging to any other person, partnership, corporation or association, upon the trial of a prosecution for the violation of any of the provisions of this chapter, but such testimony or evidence shall not be used against the person so testifying or producing records, contracts, books or papers upon a prosecution for violating any of the provisions of this chapter.

Adopted in 1890.

LAWS OF 1897, CHAP. 141.

UNLAWFUL IN CERTAIN CASES.

AN ACT to declare unlawful and void all arrangements, contracts, agreements, trusts, or combinations made with a view to lessen, or which tend to lessen, free competition in the importation or sale of articles imported into this state, or in the manufacture or sale of articles of domestic growth or of domestic raw material, to declare unlawful and void all arrangements, contracts, agreements, trusts or combinations between persons or corporations designed or which tend to advance, reduce or control the price of such product or article to producer or consumer of any such product or article; to provide for forfeiture of the charter and franchise of any corporation, organized under the laws of this state, violating any of the provisions of this act; to prohibit every foreign corporation violating any of the provisions of this act from doing business in this state; to require the attorney-general of this state to institute legal proceedings against any such corporations violating the provisions of this act; and to enforce the penalties prescribed; to prescribe penalties for any violation of this act; to authorize any person or corporation damaged by any such trust, agreement or combination, to sue for the recovery of such damage, and for other purposes.

Be it enacted by the Legislative Assembly of the State of North Dakota:

§ 1. **Trusts and combinations unlawful in certain cases.**—That all arrangements, contracts, agreements, trusts or combinations between persons or corporations made with a view to lessen, or which tend to lessen, full and free competition in the importation or sale of articles imported into this state, or in the manufacture or sale of articles of domestic growth, or of domestic raw material, and all arrangements, contracts, agreements, trusts or combinations between persons or corporations designed, or which tend to advance, reduce or control the price or the cost to the producer or to the consumer of any such product or articles are hereby declared to be against public policy, unlawful and void.

§ 2. **Forfeit charter.**—That any corporation chartered under the laws of this state, which shall violate any of the provisions of this act, shall thereby forfeit its charter and its franchise, and its corporate existence shall thereupon cease and determine. Every foreign corporation which shall violate any of the provisions of this act, is hereby denied the right to do, and is prohibited from doing business in this state. It is hereby made the duty of the attorney-general of this state to enforce this provision by due process of law.

§ 3. **Conspiracy against trade.**—That any violation of the provisions of this act shall be deemed and is hereby declared to be destructive of full and free competition and a conspiracy against trade, and any person or persons who may engage in any such conspiracy or who shall, as principal, manager, director or agent, or in any other capacity, knowingly carry out any of the stipulations, purposes, prices, rates, or orders made in furtherance of such conspiracy, shall, on conviction, be punished by a fine of not less than one hundred dollars or more than five thousand dollars, and by imprisonment in the penitentiary not less than one year or not more than ten years; or, in the judgment of the court, by either such fine or such imprisonment.

§ 4. **May sue for damages.**—That any person or persons, or corporation that may be injured or damaged by any such arrangement, contract, agreement, trust or combination, described in section 1 of this act, may sue for and recover in any court of competent jurisdiction in this state, or any person, persons or corporations operating such trusts or combinations, the full consideration or sum paid by him or them for any goods, wares, merchandise, or articles, the sale of which is controlled by any such combination or trust.

§ 5. **Judges shall instruct grand juries.**—That it shall be the duty of the judges of the district courts of this state specially to instruct the grand juries as to the provisions of this act.

Approved March 9, 1897.

OHIO.

STATUTE.

LAWS OF 1898, PAGE 143.

AN ACT to define trust and to provide for criminal penalties and civil damages, and punishment of corporations, persons, firms and associations, or persons connected with them, and to promote free competition in commerce and all classes of business in the state.

§ 1. *Be it enacted by the General Assembly of the State of Ohio,*

That a trust is a combination of capital, skill or acts by two or more persons, firms, partnerships, corporations or associations of persons, or of any two or more of them for either, any or all of the following purposes:

1. To create or carry out restrictions in trade or commerce.
2. To limit or reduce the production, or increase, or reduce the price of merchandise or any commodity.
3. To prevent competition in manufacturing, making, transportation, sale or purchase of merchandise, produce or any commodity.

4. To fix at any standard or figure, whereby its price to the public or consumer shall be in any manner controlled or established, any article or commodity of merchandise, produce or commerce intended for sale, barter, use or consumption in this state.

5. To make or enter into or execute or carry out any contracts, obligations or agreements of any kind or description, by which they shall bind or have bound themselves not to sell, dispose of or transport any article or any commodity or any article of trade, use, merchandise, commerce or consumption below a common standard figure or fixed value, or by which they shall agree in any manner to keep the price of such article, commodity or transportation at a fixed or graduated figure, or by which they shall in any manner establish or settle the price of any article, commodity or transportation between them or themselves and others, so as to directly or

indirectly preclude a free and unrestricted competition among themselves, or any purchasers or consumers in the sale or transportation of any such article or commodity, or by which they shall agree to pool, combine or directly or indirectly unite any interests that they may have connected with the sale or transportation of any such article or commodity, that its price might in any manner be affected. Every such trust as is defined herein is declared to be unlawful, against public policy and void.

§ 2. For a violation of any of the provisions of this act by any corporation or association mentioned herein, it shall be the duty of the attorney-general, or the prosecuting attorney of the proper county, to institute proper suits or quo warranto proceedings in the court of competent jurisdiction in any of the county seats in the state where such corporation or association exists or does business, or may have a domicile. And when such suit is instituted by the attorney-general in quo warranto, he may also begin any such suit in the supreme court of the state, or the circuit court of Franklin county, for the forfeiture of its charter rights, franchises or privileges and powers exercised by such corporation or association, and for the dissolution of the same under the general statutes of the state.

§ 3. Every foreign corporation, as well as any foreign association, exercising any of the powers, franchises or functions of a corporation in this state, violating any of the provisions of this act, is hereby denied the right and prohibited from doing any business in this state, and it shall be the duty of the attorney-general to enforce this provision by bringing proper proceedings in quo warranto in the supreme court, or the circuit court of the county in which defendant resides or does business, or other proper proceedings by injunction or otherwise. The secretary of state shall be authorized to revoke the certificate of any such corporation or association heretofore authorized by him to do business in this state.

§ 4. Any violation of either or all of the provisions of this act shall be and is hereby declared a conspiracy against trade, and any person who may become engaged in any such conspiracy or take part therein, or aid or advise in its commission, or who shall as principal, manager, director, agent, servant or employer, or in any other capacity, knowingly carry out any of the stipulations, purposes, prices, rates, or

furnish any information to assist in carrying out such purposes, or orders thereunder or in pursuance thereof, shall be punished by a fine of not less than fifty (\$50) dollars nor more than five thousand (\$5,000) dollars, or be imprisoned not less than six months nor more than one year, or by both such fine and imprisonment. Each day's violation of this provision shall constitute a separate offense.

§ 5. In any indictment for any offense named in this act, it is sufficient to state the purpose or effects of the trust or combination. And that the accused is a member of, acted with or in pursuance of it, or aided or assisted in carrying out its purposes, without giving its name or description, or how, when and where it was created.

§ 6. In prosecutions under this act, it shall be sufficient to prove that a trust or combination, as defined herein, exists, and that the defendant belonged to it, or acted for or in connection with it, without proving all the members belonging to it, or proving or producing any article of agreement, or any written instrument on which it may have been based; or that it was evidenced by any written instrument at all. The character of the trust or combination alleged may be established by proof of its general reputation as such.

§ 7. Each and every firm, person, partnership, corporation or association of persons, who shall in any manner violate any of the provisions of this act, shall for each and every day that such violations shall be committed or continued, after due notice given by the attorney-general or any prosecuting attorney, forfeit and pay the sum of fifty (\$50) dollars, which may be recovered in the name of the state, in any county where the offense is committed, or where either of the offenders reside; and it shall be the duty of the attorney-general, or the prosecuting attorney of any county on the order of the attorney-general, to prosecute for the recovery of same. When the action is prosecuted by the attorney-general against a corporation or association of persons, he may begin the action in the circuit court of the county in which defendant resides or does business.

§ 8. That any contract or agreement in violation of the provisions of this act, shall be absolutely void and not enforceable either in law or equity.

§ 9. That the provisions hereof shall be held cumulative of each other and of all other laws in any way affecting them now in this state.

§ 10. It shall not be lawful for any person, partnership, association or corporation, or any agent thereof, to issue or to own trust certificates, or for any person, partnership, association or corporation, agent, officer or employee, or the directors or stockholders of any corporation, to enter into any combination, contract or agreement with any person or persons, corporation or corporations, or with any stockholder or director thereof, the purpose and effect of which combination, contract or agreement shall be to place the management or control of such combination or combinations, or the manufactured product thereof, in the hands of any trustee or trustees with the intent to limit or fix the price or lessen the production and sale of any article of commerce, use or consumption, or to prevent, restrict or diminish the manufacture or output of any such article, and any person, partnership, association or corporation that shall enter into any such combination, contract or agreement for the purpose aforesaid shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine not less than fifty dollars, nor more than one thousand dollars.

§ 11. In addition to the criminal and civil penalties herein provided, any person who shall be injured in his business or property by any other person or corporation or association or partnership, by reason of anything forbidden or declared to be unlawful by this act, may sue therefor in any court having jurisdiction thereof in the county where the defendant resides or is found, or any agent resides or is found, or where service may be obtained, without respect to the amount in controversy, and to recover two-fold the damages by him sustained, and the costs of suit. Whenever it shall appear to the court before which any proceedings under this act may be pending, that the ends of justice require that other parties shall be brought before the court, the court may cause them to be made parties defendant and summoned, whether they reside in the county where such action is pending, or not.

§ 12. The word "person" or "persons," whenever used in this act, shall be deemed to include corporations, partnerships and associations existing under or authorized by the state of Ohio, or any other state, or any foreign country.

§ 13. This act shall take effect and be in force from and after the first day of July, 1898.

[Passed April 19, 1898.]

COMMON-LAW DECISIONS.

The Central Ohio Salt Co. v. Stephen H. Guthrie.

35 O. St., 666.

January, 1880.

Statement.

About thirty salt dealers and manufacturers in the Muskingum and Hocking valleys formed themselves into the Central Ohio Salt Company. The members were to continue their business as before except that the sale and price of salt was to be controlled by the company. Defendant has violated the contract of association and suit is brought against him for damages. He defends on the ground that the contract was illegal.

Opinion.

“That all contracts in partial restraint of trade are not void as against public policy is too well settled to be gainsaid; while, on the other hand, it is as fully established, as a general rule, that contracts in general restraint of trade are against public policy and, therefore, absolutely void. Upon the authorities, however, the line between such as are void and those that are binding, is not very clearly defined.

“Public policy, unquestionably, favors competition in trade, to the end that its commodities may be afforded to the consumer as cheaply as possible, and is opposed to monopolies, which tend to advance market prices to the injury of the general public.

“We think the contract before us should not be enforced.”
Plaintiff can not recover.

Emery et al. v. The Ohio Candle Co.

47 O. St., 320.

January, 1890.

Statement.

In 1880 an unincorporated company was formed to continue six years, called The Candle Manufacturers' Association which included the manufacturers of ninety-five per cent of the star candles east of the western boundary of Utah. The members were required to pay into the treasury of the association two and a half cents a pound on all candles sold by them within that territory. But neither was bound to operate his factory; and whether he did or did not he received his proportion of the pool which was based on his former business. Under this agreement a sum of

\$2,151.17 is due plaintiff, and this suit is brought to recover it.

Opinion.

"We are of the opinion that the suit can not be maintained, for the reason that the objects of the association were contrary to public policy, and in no way to be aided by the courts."

Plaintiff can not recover.

State ex rel. v. Standard Oil Co.

49 O. St., 137.

March 2, 1892.

Statement.

Defendant is an Ohio corporation. Its stockholders and the stockholders of many other oil companies transferred their stock to a board of seven trustees, and received in return trust certificates. The state brings suit for the forfeiture of defendant's charter and other relief.

The defenses are:

1. The illegal acts are not the corporation's but the stockholders'.
2. The statute of limitations has run.

Opinion.

Where all, or a majority of the stockholders composing a corporation do an act which is designed to affect the property and business of the company, and which, because of their controlling number, does affect the property and business of the company, in the same manner as if it had been a formal resolution of its board of directors, the act should be regarded as the act of the corporation.

The act in this case was *ultra vires*, and against public policy, and would have been ground for the forfeiture of the defendant's charter if the action had been commenced in time, but, as it has been over five years since the act was committed, the statute of limitations prevents forfeiture now. But other relief was prayed, and this will be granted.

A decree is granted "ousting the defendant from the right to make the agreement set forth in the petition and of the power to perform the same."

OKLAHOMA.

STATUTE.

STATUTES OF OKLAHOMA, CHAP. 83.

TRUSTS.

AN ACT to prevent combinations in restraint of trade.

Be it enacted by the Legislative Assembly of the Territory of Oklahoma:

§ 1. If any individual, firm, partnership or any association of persons whatsoever, shall create, enter into, become a member of, or a party to, any pool, trust, agreement, combination or understanding with any other individual, firm, partnership or association of persons whatsoever, to regulate or fix the price of, or to prevent or restrict, the competition in the sale of provisions, feed, fuel, lumber, or other building materials, articles of merchandise or other commodity [they], shall be deemed guilty of [a] misdemeanor and upon conviction thereof, shall be fined not less than fifty, nor more than five hundred dollars.

§ 2. It shall not be lawful for any corporation organized under the laws of this territory, or organized under the laws of any other territory or state, and doing business in this territory, to enter into any combination, contract, trust, pool or agreement with any other corporation or corporations, or with any individual firm, partnership or association of persons, whatever, for the purpose of regulating or fixing the price of, or preventing or restricting competition, in the sale of provisions, feed, fuel, lumber, or other building materials, articles of merchandise, or other commodity, including the fixing of the rate of interest. [Any] president, manager, director, agent, receiver or other officer of any such corporation, violating the provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined not less than fifty nor more than five hundred dollars, for the first offense, and upon a second conviction shall be fined a sum equal to twice the amount of the first fine, and such corporation shall forfeit its corporate right and franchise, and its corporate existence, in this territory, shall thereupon cease and determine.

§ 3. Any person purchasing provisions, feed, material, articles of merchandise, or any commodity from any individual, firm, partnership or corporation, transacting business in violation of the provisions of this act, such person so purchasing shall not be liable for the price or payment of any such article or commodity and may plead this act, as a defense in any suit for price or payment. In any civil action brought under the provisions of this section the court before whom such suit shall be pending may compel the plaintiff to testify, but if the plaintiff be a corporation then the court may compel any officer, agent, or employee of such corporation to attend, appear, and testify, or compel the production of any contract, or papers in evidence in such civil action: *Provided*, The evidence so obtained shall not be used in any criminal prosecution against the person so testifying except in a criminal prosecution for perjury committed in giving such testimony.

§ 4. Any person who shall have purchased from any individual, firm, partnership or corporation, doing business in violation of the provisions of this act, any provisions, feed, fuel, lumber or other building material, articles of merchandise, or other commodity, and paid for the same, may maintain a civil action to recover the full amount of damages sustained in consequence of any such violation of the provisions of this act, together with a reasonable attorney's fee to be fixed by the court, which attorney's fee shall be taxed and collected as part of the costs in such case. In any civil action brought under the provisions of this section the court before whom such suit be pending may compel the defendant to testify, but if the defendant be a corporation, then the court may compel any officer, agent or employee of such corporation to attend, appear and testify or compel the production of any contract or paper as evidence in such civil action: *Provided*, The evidence so obtained shall not be used in any criminal action against the person so testifying except in a criminal prosecution for perjury committed in giving such testimony.

§ 5. It shall be the duty of the prosecuting attorneys in their respective counties, to enforce the foregoing provisions of this act, and any prosecuting attorney securing a conviction under the provisions of this act, shall be entitled in addition to such fee or salary as by law he is allowed for such prosecution, to one-fifth of the fine received.

[Took effect December 25, 1890.]

PENNSYLVANIA.

COMMON-LAW DECISIONS.

The Morris Run Coal Co. v. The Barclay Coal Co.

68 Penn. St., 173.

January, 1871.

Statement.

Five Pennsylvania coal corporations, of which plaintiff and defendant are two, controlled bituminous coal. They agreed that sales should be regulated and prices fixed by a committee. If one company should sell more than its share, it should divide the proceeds with the other four. Defendant sold more than its share and plaintiff seeks to compel it to divide the profits.

Opinion.

The contract was in restraint of trade to such an extent that it was against public policy, and hence is void.

Plaintiff can not recover.

Nester et al. v. Continental Brewing Co. et al.

161 Penn., 473.

May 14, 1894.

Statement.

A very large number of brewers in Philadelphia and Camden formed an association which was to control the price at which the members were to sell beer. Plaintiffs and defendants were members of this association which was known as the Enterprise Brewing Company, Limited. Growing out of this transaction is a debt due plaintiffs from the association of about \$17,000. An accounting is prayed.

Opinion.

The agreement sought to be enforced creates a combination in restraint of trade tending to destroy competition and to create a monopoly in an article of daily consumption. It is not even contended that the agreement was necessary to protect the partners' interests. The natural tendency of such contracts is to injure public interests and they are, therefore, void.

Relief is denied.

RHODE ISLAND.

COMMON-LAW DECISION.

Oakdale Manufacturing Co. et al. v. Sebastian Garst.

18 R. I., 484.

February 27, 1894.

Statement.

Three oleomargarine companies formed a corporation, the Oakdale Manufacturing Company, to which each gave all its business, promised not to be in any way connected with any other manufactory of oleomargarine for five years, and received stock in the new company as payment. Defendant, one of the promisers, has now commenced manufacturing oleomargarine, and this action is brought to enjoin him. The defense is that the contract being an unreasonable restraint of trade is void.

Opinion.

If a contract in restraint of trade is reasonable it is valid, otherwise, void. Inasmuch as in this case the Oakdale Manufacturing Company expected to do a large export business it can not be said that an absolute restraint of five years was unreasonable. The contract is valid.

Defendant is enjoined.

SOUTH CAROLINA.

CONSTITUTIONAL PROVISION.

ARTICLE IX.

§ 13. The General Assembly shall enact laws to prevent all trusts, combinations, contracts and agreements against the public welfare; and to prevent abuses, unjust discriminations and extortion in all charges of transporting and transmitting companies; and shall pass laws for the supervision and regulation of such companies by commission or otherwise, and shall provide adequate penalties, to the extent, if necessary for that purpose, of forfeiture of their franchises.

[Adopted, December 4, 1895.]

STATUTES.

LAWS OF 1897, NUMBER 265.

AN ACT to prohibit trusts and combinations and to provide penalties.

§ 1. *Be it enacted by the General Assembly of the State of South Carolina*, That from and after the passage of this act, all arrangements, contracts, agreements, trusts or combinations between two or more persons as individuals, firms or corporations, made with a view to lessen, or which tends to lessen, full and free competition in the importation or sale of articles imported into this State, or in the manufacture or sale of articles of domestic growth or of domestic raw material, and all arrangements, contracts, agreements, trusts or combinations between persons or corporations designed or which tend to advance, reduce or control the price or the cost to the producer or to the consumer of any such product or article, are hereby declared to be against public policy, unlawful and void.

§ 2. Whenever complaint is made upon sufficient affidavit or affidavits showing a *prima facie* case of violation of the provisions of the first section of this Act by any corporation,

domestic or foreign, it shall be the duty of the Attorney-General to begin an action against such domestic corporation to forfeit its charter, and in case such violation shall be established the court shall adjudge the charter of such corporation to be forfeited, and such corporation shall be dissolved, and its charter shall cease and determine; and in the case of such showing as to a foreign corporation an action shall be begun by the Attorney-General in said court against such corporation to determine the truth of such charge; and in case such charge shall be considered established, the effect of the judgment of the court shall be to deny to such corporation the recognition of its corporate existence in any court of law or equity in this State. But nothing in this section shall be construed to affect any right of action then existing against such corporation. •

§ 3. Any violation of the provision of this Act shall be deemed, and is hereby declared to be, destructive of full and free competition and a conspiracy against trade, and any person or persons who may engage in any such conspiracy, or who shall, as principal, manager, director or agent, or in any other capacity, knowingly carry out any of the stipulations, purposes, prices, rates or orders made in furtherance of such conspiracy, shall on conviction be punished by a fine of not less than one hundred dollars or more than five thousand dollars, and by imprisonment in the penitentiary not less than six months or more than ten years, or in the judgment of the court, by either such fine or such imprisonment.

§ 4. That any person or persons or corporation that may be injured or damaged by any such arrangement, contract, agreement, trust or combination described in section one of this Act may sue for and recover, in any court of competent jurisdiction in this State, of any person, persons or corporation operating such trust or combination, the full consideration or sum paid by him or them for any goods, wares, merchandise or articles the sale of which is controlled by such combination or trust.

§ 5. That any and all persons may be compelled to testify in any action or prosecution under this Act: *Provided*, That such testimony shall not be used in any other action or prosecution against such witness or witnesses and such witness or witnesses shall forever be exempt from any prosecution for the act or acts concerning which he or they testify.

§ 6. Nothing contained in this Act shall be taken or construed to apply to any person or persons acting in the discharge of official duties under the laws of this State.

§ 7. All Acts in conflict with this Act be, and the same are hereby, repealed.

Approved the 25th day of February, A. D. 1897.

LAWS OF 1899, NUMBER 39.

AN ACT to prevent fire insurance companies, associations or partnerships doing business in this State, or the agents of said companies or partnerships, from entering into combination to make or control rates for fire insurance on property in this State, and providing punishment for violation of this act.

§ 1. *Be it enacted by the General Assembly of the State of South Carolina*, That it shall be unlawful for any fire insurance company, association or partnership doing a fire insurance business in this State, to enter into any compact or combination with other fire insurance companies, associations or partnerships, or to require or allow their agents to enter into any compact or combination with other insurance agents, companies, associations or partnerships, for the purpose of governing or controlling the rates charged for fire insurance on any property in this State: *Provided*, That nothing herein shall prohibit one or more of such companies from employing a common agent or agents to supervise and advise of defective structures or suggest improvements to lessen fire hazard.

§ 2. That all fire insurance companies, associations or partnerships doing a fire insurance business in this State shall cause to be filed on the first day of March, 1900, and in each year thereafter, with the Comptroller-General of this State, the affidavit of some officer or agent of said company, association or partnership, who resides in this State, setting forth the fact that the company of which he is an officer or agent has not in the twelve months previous to the date of the said affidavit entered into any trust, combination or association for the purpose of preventing competition in insurance rates in this State. The said affidavit shall be made before some officer of this State authorized to administer oaths; and any false statement made in said affidavit shall be deemed perjury, and punished by a fine of not less than one hundred

dollars nor more than one thousand dollars, and by confinement in the penitentiary for one year, or, in the discretion of the court, by confinement in jail for a period of not less than thirty days nor more than twelve months: *Provided, further,* That any attempt to evade this Act by agreeing upon any one person or number of persons for the purpose of making rates for all such insurance companies, associations or partnerships, or by buying rate books made by any person or persons, shall be deemed a violation of this Act, and shall be punished as herein provided.

§ 3. The Comptroller-General or other official to whom said companies, association or partnership are annually required to report to in this State, shall forthwith revoke and recall the license or authority of such company or companies, association or associations, partnership or partnerships, to do or to transact business in this State for any violation of this Act; and no renewal of authority shall be granted to it for three years after such official revocation. Notice of such revocation to be duly published for one consecutive week in three or more daily papers published in this State, and for a violation of any of the provisions of this Act by any such company or companies, association or associations, partnership or partnerships, they shall on conviction thereof pay a fine of not less than five hundred dollars.

§ 4. It shall be the duty of the Attorney-General, or the Solicitor upon his request, to cause the provisions of this Act to be enforced.

§ 5. It shall also be the duty of the Controller-General, or other official now charged or to be charged with the enforcement of the insurance laws of this State, to require every fire insurance company, association or partnership doing a fire insurance business within this State, to file with the annual statement made to him, a statement duly sworn to by the manager or president of such company, association or partnership, legally admitted in this State, that it has not in the year intervening between the issue of its last license and that applied for, violated the conditions of this Act.

§ 6. This Act shall be in force from the first day of March, 1900, and all Acts or parts of Acts inconsistent therewith are hereby repealed.

Approved the 7th day of March, A. D. 1899.

SOUTH DAKOTA.

CONSTITUTIONAL PROVISION.

ARTICLE 17.

§ 20.¹ Monopolies and trusts shall never be allowed in this state and no incorporated company, co-partnership or association of persons in this state shall directly or indirectly combine or make any contract with any incorporated company, foreign or domestic; through their stockholders or trustees or assigns of such stockholders or with any co-partnership or association of persons, or in any manner whatever to fix the prices, limit the production or regulate the transportation of any product or commodity so as to prevent competition in such prices, production or transportation or to establish excessive prices therefor.

The legislature shall pass laws for the enforcement of this section by adequate penalties and in the case of incorporated companies, if necessary for that purpose may, as a penalty, declare a forfeiture of their franchises.

STATUTES.

LAWS OF 1890, CHAP. 154.

UNLAWFUL TRUSTS AND COMBINATIONS.

AN ACT, to declare certain combinations, agreements, or trusts unlawful, and to restrain and punish the same.

Be it enacted by the Legislature of the State of South Dakota:

§ 1. Defining which trusts are unlawful.—That any combination, agreement or trusts, made, entered into or formed between persons, co-partnerships, or corporations in this state, or by or between any persons co-partnerships or corporations within this state with any person, co-partnership or corporation without this state, with the intent and

¹ This section was added to the constitution in 1896 by popular vote of 36,763 to 9,136.

which shall in any manner tend to prevent a free, fair and full competition in the production, and manufacture or sale of any article or commodity of domestic growth, use or manufacture, or that tends to advance the price to the user or consumer of any article or commodity of domestic growth, use, production or manufacture beyond the reasonable cost of the production or manufacture thereof, or that tends to advance the price to the user, purchaser or consumer of farm machinery, implements, tools, supplies, and lumber, wood and coal, imported into this state from any other state, territory or country, beyond the reasonable cost of production and sale or manufacture and sale of the same, or which tends to and does induce and accomplish a sale of wheat, corn, oats, barley, flax, cattle, sheep, hogs, or other farm or agricultural products for less than such farm or agricultural products are really worth at the time of sale, or for a less price than such farm or agricultural products would sell for in open market if such combination, agreement or trust did not exist, or tends to, or shall increase, enhance or maintain rates of interest on loans of money, for forbearance of payment of any sum of money, or debt, or to prevent a fair competition for a low rate of interest on loans, or for the forbearance of the payment of any debt or obligation, is hereby declared to be against public policy and unlawful and void, and any person or persons who shall be a party to any such unlawful combination; agreement or trust, or who shall in any way assist, aid or abet any such combination, agreement or trust, either as principal, agent, attorney, employee or otherwise, shall be deemed guilty of a felony, and upon conviction thereof, shall be punished by a fine not exceeding one thousand dollars or imprisonment in the state's prison not exceeding three years, or both such fine and imprisonment at the discretion of the court.

§ 2. Unlawful sale of articles or goods.—Any person or persons who shall agree and undertake, as agent, to sell, and shall sell in this state, any of the articles, commodities, products or machinery, implements, tools, supplies or goods, wares and merchandise, mentioned in section one of this act, for a non-resident manufacturer of, or wholesale dealer in such articles, commodities, products, machinery, implements, tools, supplies or goods, wares and merchandise, while at the same time such non-resident, manufacturer or wholesale

dealer, refuses to sell at wholesale or manufacturer's prices, such farm implements, tools or supplies, as are furnished to such agent for sale in this state, to responsible and reputable wholesale or retail dealers in this state shall be deemed to have unlawfully combined and agreed within the meaning of section one of this act, with such non-resident manufacturer or wholesale dealer, with intent to prevent a full, free and fair competition in the sale in this state, of any such farm machinery, implements, tools or supplies furnished to such agent as aforesaid, and refuse to be sold to wholesale or retail dealers in this state as aforesaid, and with intent to advance the price to the user and purchaser and consumer beyond the reasonable cost of manufacture and sale, as production and sale of such farm machinery, farm tools, farm implements and supplies refused to be sold as aforesaid to dealers in this state as aforesaid, and such agent or agents upon conviction thereof shall be punished by a fine of not more than one thousand dollars or imprisonment in state's prison not more than five years, or both such fine and imprisonment at the discretion of the court.

§ 3. **Non-resident corporations; liability of.**—Any non-resident corporation, co-partnership or company, or person, who shall ship or bring into this state for sale any of the commodities, products, or goods, wares or merchandise, machinery, tools or implements mentioned in section one of this act, to be sold only and exclusively by an agent or agents, or person or persons selected, appointed and controlled in the sale of such goods by such non-resident corporations, co-partnership, company or person, in violation of the spirit, intent and purpose of this act, may be restrained by an order of injunction from any court of competent jurisdiction in this state from selling or disposing of any such commodities, products, goods, wares or merchandise, machinery, tools or implements, or having the same sold in this state until the defendant in such order offer the same for sale, or to be sold, on like and regular terms, and without restrictions except price and terms of payment, to reputable and responsible wholesale or retail dealers of this state, without regard to location, who may desire to purchase the same or any portion thereof, for sale again. The order of injunction mentioned in this section may be issued upon affidavits which shall show to the satisfaction of the court or judge thereof to

whom application is made that the person or persons, or co-partnership or corporation named as defendant in the application and affidavit for an order of injunction has violated some provision of this act. The order of injunction issued upon such affidavits may be served in the manner now provided by law for the service of such orders and in the absence of the defendant therein, or his agent or attorney, such order of injunction may be served on any or all persons in this state having in possession and for sale, or in his possession for the use, or subject to the order or direction of the defendant or defendants in such proceeding, any of the several articles or commodities or goods, wares and merchandise mentioned in section one of this act, the sale of which is restrained by this order. On the final hearing by the court if the application for injunction be sustained by the court, the court shall be rendered (render) judgment against the defendant in such proceeding, and in favor of the plaintiff therein, for all the costs incurred by the plaintiff therein, including such attorney's fee allowed by the court therein. Any judge of a Circuit Court or of the Supreme Court may in like manner enjoin and restrain any manufacturing or wholesale or retail business, being conducted or carried on in violation of any of the provisions or spirit and intent of this act from continuing such manufacturing or wholesale or retail business in this state, and all final restraining orders may be perpetual or for such period, and upon such terms and conditions as the court or judge thereof shall determine. All laws, rules and regulations now in force relating to applications for and granting orders of injunction in this state shall apply to proceedings under the provision of this act, so far as the same are not different from, or in conflict with the provisions of this act.

§ 4. Duty of state's attorney.—It is hereby made the special duty of each and every state's attorney of each and every county in this state, who shall have good reason to believe that any of the provisions of section one of this act are being violated by any person or persons in his county, or upon affidavit of two or more reputable persons made and delivered to him, showing or stating affirmatively that any person or persons in his county have violated any of the provisions of section one of this act, to make complaint and cause the arrest of such person or persons and to prosecute him or

them diligently to conviction, if proved to be guilty, and also at the request of any citizen of his county, and for good cause shown, apply for an injunctional or restraining order as provided in this act: *Provided*, That the provisions of this section shall not be construed to prevent any person from making complaint to any court of competent jurisdiction for any violation of the provisions of this act, and in such case the court shall issue a warrant and proceed the same as though the state's attorneys had made the complaint, and the (court) may also permit any attorney whom the complainant may employ to appear and prosecute such action at any stage of the proceedings therein, and such attorney's fee in any such case, shall be deemed part of the costs of prosecution as mentioned in section one of this act.

¹ *And provided further*, That any person or persons, who may suffer damage by reason of the operation of any such pool, trust or combination defined in section one of this act, or any pool, trust or combination formed without, but holding property within the state, may maintain an action therefor, and may recover the amount of damage sustained; and any person or persons who in good faith may have contributed any funds, or property, as a donation or otherwise, for location, building, or carrying on of any milling, or manufacturing, or other industry in this state, or any stockholder in any corporation or company formed for the purpose of carrying on and operating any such industry which milling, manufacturing or other industry may thereafter become the property of, or controlled by any such pool, trust or combination, without the consent of such person or stockholder, may maintain an action and recover against such pool, trust or combination, or individuals composing the same, judgment for the amount so contributed or invested in stock as the case may be, and the property, including the plant and all buildings, machinery and other property so owned or controlled by such trusts or combinations shall be liable to attachment and execution in such action, and may be sold to satisfy any judgment recovered therein; and the court in which such case is pending may appoint a receiver to take charge of such property and receive all rents, issues and profits therefrom, in addition to such other powers as are now conferred by law

¹ The part of section four which follows the star was added by chapter 171 of the laws of 1893.

upon receivers, and immediately after the sale of such property and confirmation thereof by the court, the purchaser shall be let into possession of such property; and in case of a surplus after satisfying such judgment or judgments, the same shall be paid over to the clerk of the court in which such action is pending, and shall be liable thereafter to the same extent as the property sold was liable, and if such surplus shall remain in the hands of said clerk, and no proceedings instituted to recover the same, or any portion thereof, for three years thereafter, the same, or such portion thereof, then remaining in the hands of said clerk, shall be paid over to the county treasurer of the county where such property shall be held or located and be credited to the school fund of the district or township in which such property is held or located, and shall be paid out by such county treasurer in like manner as other funds belonging to such district or township.

§ 5. The duty of secretary of state.—It shall be the duty of the secretary of this state on the application of persons for a charter to establish any corporation, to require two applicants therefor to make oath or affirmation that such corporation is not being formed for the purpose of enabling several corporations to avoid the provisions of this act, and if such oath or affirmation is not satisfactory the secretary is authorized to withhold such charter.

Approved March 7, 1890.

LAWS OF 1897, CHAP. 94.

MONOPOLIES AND TRUSTS.

RELATING TO MONOPOLIES AND TRUSTS.

AN ACT to enforce section twenty of article seventeen of the constitution of the State of South Dakota.

Be it enacted by the Legislature of the State of South Dakota:

§ 1. Monopolies and trusts defined.—That within the meaning of this act a trust or a monopoly is a combination of capital, skill, or acts of two or more persons, firms, corporations or associations of persons; first, to create or carry out restrictions in trade; second, to limit the production or to increase or reduce the price of commodities; third, to prevent competition in the manufacture, transportation, sale or purchase of merchandise, produce or commodities; fourth, to fix any standard or figure whereby the price to the public shall be in any manner established or controlled. *Provided, That*

nothing in this act shall be construed so as to include labor organizations.

§ 2. **Unlawful to prevent competition.**—That it shall be unlawful for any incorporated company, co-partnership or association of persons in this state directly or otherwise to fix prices, limit the production or regulate the transportation of any product or commodity so as to obstruct or delay or prevent competition in such production or transportation or limit transportation of commodities or to fix prices therefor.

§ 3. **Unlawful to combine.**—That it shall be unlawful for any incorporated company, co-partnership or association of persons in any other state to directly or otherwise combine or make any contract with any incorporated company, co-partnership, association of person or persons in this state to combine or make any contract to fix prices, limit the production or (of) commodity or regulate the transportation directly or otherwise of any product or commodity so as to obstruct or prevent competition or limit transportation or to fix prices therefor.

§ 4. **Violation-penalty.**—Any person or persons, officer or servants of any company, co-partnership or association of persons convicted of violating any provisions of this act shall be deemed guilty of a misdemeanor and upon conviction thereof for the first offense shall be fined not less than one thousand dollars, nor more than five thousand dollars, and upon conviction for the second offense not less than five thousand dollars nor more than ten thousand dollars.

§ 5. **Fines, to whom paid.**—All fines recovered under this act shall be paid, one half to the person or persons aggrieved and the other half shall be paid into the county treasury of the county in which the conviction may be made to the credit of the general county fund of said county.

§ 6. **Duty of state's attorney.**—It shall be the special duty of the state's attorney of each county in this state upon the affidavit of any person or persons aggrieved showing that any person or persons have violated any provisions of this act to make complaint and cause the arrest of such person or persons and to prosecute him or them to conviction if proved to be guilty and it shall be the duty of the attorney-general of the state upon the request of any state's attorney for any county to aid in the prosecution of actions under this act.

§ 7. **Repeal.**—That all acts or parts of acts in conflict with this act are hereby repealed.

Approved March 1, 1897.

TENNESSEE.

CONSTITUTIONAL PROVISION.

ARTICLE I.

§ 22. Perpetuities and monopolies are contrary to the genius of a free state, and shall not be allowed.

[Adopted, February 23, 1870.]

STATUTES.

SHANNON'S CODE SUPPLEMENT, PAGE 280.

Conspiracies and formations of trusts prohibited.

§ 1. That it shall not be lawful for any person or persons, or associations of persons, or any corporation in this state, or doing business in this state, to form, or agree to, or to conspire to form, any trust, pool, or corner, or combination, or any other arrangement or device, in or about any article of legitimate traffic, the production or manufacture or sale of such article, that may injuriously affect, and for the purpose of injuriously affecting, the legitimate trade and commerce of the county, or to limit the supply or production of said articles, whereby the price of such produce or manufactured articles, or other articles of legitimate trade, may be unduly depressed and put down, or unduly raised or increased, for the purpose of speculation, either by pooling or purchasing said articles for the purpose of withdrawing them from market to destroy legitimate competition, or to create a monopoly or corner in the same, or to produce an undue demand for the same, and that [thus] to unduly raise the price of said articles, or by throwing the same on the market, when so accumulated or purchased, for the purpose of creating an undue depression in the price of such article, and by such means to destroy or limit legitimate competition in the production, manufacture, or sale of such articles, as [or] by any other device or arrangement for such purpose. All such agreements, trusts, pools, corners, and combinations are hereby prohibited; *Provided*, Nothing herein contained

shall be construed to prevent or interfere with parties engaged in legitimate trade and speculation.

§ 2. That any person or persons or corporation violating the first section of this act, for the first offense, shall, on conviction, pay a fine of not less than two hundred and fifty dollars, and, for the second offense, a fine of not less than five hundred dollars; and the attorney-general, for each conviction, shall have a taxed fee of fifty dollars, and shall have, in addition, fifty per cent of the money actually received on such fine, and he shall prosecute all such cases *ex officio*, without any other prosecutor; and the courts shall give this act in charge and the grand jury shall have full inquisitorial power in such cases.

§ 3. That no contract made by any person or persons or incorporations, whereby to carry out, or agree to carry out, any of the agreements or combinations enumerated in, and prohibited in, the foregoing act, shall be enforced in any of the courts of this state, whether the same be made by citizens of this or any other state.

§ 4. That any corporation created or incorporated by or under the laws of this state, which violates any provisions of this act, shall, thereby, forfeit its corporate rights and franchises, and its corporate existence shall, thereupon, cease and determine; and it shall be the duty of the attorney-general of the state, of their own motion, and without leave or order of any court or judge, to institute an action in behalf of the people, and in the name of the state, for the forfeiture of such rights and franchises, and the dissolution of such corporate existence; or any citizen of the state may institute such suit by proceedings in a court of chancery, in the name of the state, and said corporations may be enjoined from violations of this act pending such proceedings, provided such citizen may not begin such proceedings without giving security for cost in such cases.

Approved April 6, 1889.

SHANNON'S CODE SUPPLEMENT, PAGE 218.

Combinations in restraint of trade, production, manufacture, or sale prohibited:

§ 1. That all trusts, pools, contracts, arrangements or combinations now existing or hereafter made with a view or which tend to prevent full and free competition in the production,

manufacture, or sale of any article of domestic growth, production, or manufacture; or in the importation or sale of any article of domestic growth, production, or manufacture; or in the importation or sale of any article grown, produced, or manufactured in any other state or country; or which are designated or tend to fix, regulate, limit, or reduce the price of any article of growth, production, or manufacture; or which are designed or tend in any way to create a monopoly, are hereby declared to be unlawful, against public policy, and void.

§ 2. That all persons entering into or continuing with any trust, pool, contract, arrangement, agreement, or combination, either in his own account, or as agent or attorney for another company or as an officer, agent, or stockholder of any corporation, or in any capacity whatever, shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by a fine of not less than five hundred dollars (\$500) nor more (than) five thousand dollars (\$5,000), and imprisoned in the penitentiary not less than one (1) year nor more than five (5) years.

§ 3. That all persons and corporations and the officers and the stockholders of all corporations that shall become or continue to be members of, or in any way connected with, or concerned in any such trust, contract, agreement or combination, shall be jointly and severally liable to pay all the debts, obligations and liabilities of each and every person and corporation that may become or continue a member thereof, connected therewith, or concerned therein, as fully as if all were partners in the creation of such debts, obligations and liabilities.

§ 4. That if any corporation organized under the laws this state, or any officer or stockholder thereof, as such, shall become or continue to be a member of any such trust, pool, contract, agreement, arrangement, or combination, its charter shall become and be hereby forfeited; and it shall be the duty of the attorney-general of the county where the same is located or having its principal office, to bring suit against such corporation in the circuit court of such county, to have its said charter declared forfeited for that reason, and to wind up the same under the order of such courts.

§ 5. That when action at law or suit in equity shall be commenced in any court of this state, it shall be lawful, in the defense thereof, to plead in bar or in abatement of the action that the plaintiff or any other person or corporation inter-

ested in the prosecution of the action is a member or connected with, and the cause of action grows out of, some business or transaction with such trust, pool, contract, agreement, arrangement, or combination, as described in the first section of this act.

§ 6. That any person or corporation injured or damaged by any such trust, pool, contract, agreement, arrangement, or combination may sue and recover fines in any court of competent jurisdiction, double the amount of damages suffered by such person or corporation.

§ 7. That upon the trial of any civil action against any corporation, person, or copartnership for a violation of any section of this act, all officers, stockholders, and agents of such corporation, person, or copartnership shall be competent witnesses against the defendant, as such, on trial; and such officers, stockholders, and agents may be compelled to testify against such defendant, and produce all books and papers in their custody or control pertinent to the issues in such action at or before the time of trial, and shall not be excused from producing any books or papers because the same might tend to criminate such witnesses; but nothing which such witness shall testify to, and no books or papers produced by him, shall in any manner be used against him in any criminal action to which he is a party.

§ 8. That all acts and part of acts of the general assembly of the state of Tennessee in conflict with this act be, and the same are hereby, repealed.

Approved March 30, 1891.

LAWS OF 1897, CHAP. 93.

AN ACT to prohibit conspiracies or agreements to limit the output of coal in this State, or to raise the price of coal to the consumer, or to any intermediate dealer.

§ 1. *Be it enacted by the General Assembly of the State of Tennessee*, That any person who, directly or indirectly, enters into a conspiracy or agreement with intent to limit the output of coal in this State for the purpose of raising the price of coal to the consumer, or to any intermediate dealer, shall be guilty of a misdemeanor, and, upon conviction, fined not less than one thousand dollars.

§ 2. *Be it further enacted*, That all laws and parts of laws inconsistent with this Act, be and the same are hereby repealed.

§ 3. *Be it further enacted*, That this Act take effect from and after its passage, the public welfare requiring it.

Passed April 10, 1897.

Approved April 30, 1897.

LAWS OF 1897, CHAP 94.

AN ACT to declare unlawful and void all arrangements and contracts, agreements, trusts or combinations made with a view to lessen or which tend to lessen free competition in the importation or sale of articles imported into this State; or in the manufacture or sale of articles of domestic growth or of domestic raw material; to declare unlawful and void all arrangements, contracts, agreements, trusts or combinations between persons or corporations designed, or which tend to advance, reduce or control the price of such product or articles to producer or consumer of any such product or article; to provide for forfeiture of the charter and franchise of any corporation, organized under the laws of this State, violating any of the provisions of this Act; to prohibit every foreign corporation violating any of the provisions of this Act from doing business in this State; to require the Attorney-General of this State to institute legal proceedings against any such corporations violating the provisions of this Act, and to enforce the penalties prescribed; to prescribe penalties for any violation of this Act; to authorize any person or corporation damaged by any such trust, agreement or combination, to sue for the recovery of such damages, and for other purposes.

§ 1. *Be it enacted by the General Assembly of the State of Tennessee, and it is hereby enacted by the authority of the same*, That from and after the passage of this Act, all arrangements, contracts, agreements, trusts or combinations between persons or corporations made with a view to lessen, or which tend to lessen, full and free competition in the importation or sale of articles imported into this State, or in the manufacture or sale of articles of domestic growth or of domestic raw material, and all arrangements, contracts, agreements, trusts or combinations between persons or corporations designed, or which tend, to advance, reduce or control the price or the cost to the producer or to the consumer of any such product or article, are hereby declared to be against public policy, unlawful and void.

§ 2. *Be it further enacted*, That any corporation chartered under the laws of the State which shall violate any of the provisions of this Act, shall thereby forfeit its charter and its franchise, and its corporate existence shall thereupon cease

and determine. Every foreign corporation, which shall violate any of the provisions of this Act, is hereby denied the right to do, and is prohibited from doing, business in this State. It is hereby made the duty of the Attorney-General of this State to enforce the provisions by due process of law.

§ 3. *Be it further enacted*, That any violation of the provisions of this Act shall be deemed, and is hereby declared to be, destructive of full and free competition and a conspiracy against trade, and any person or persons who may engage in any such conspiracy, or who shall, as principal, manager, director or agent, or in any other capacity, knowingly carry out any of the stipulations, purposes, prices, rates, or orders made in furtherance of such conspiracy, shall, upon conviction, be punished by a fine of not less than one hundred dollars or more than five thousand dollars, and by imprisonment in the penitentiary not less than one year nor more than ten years; or in the judgment of the court, by either such fine or imprisonment.

§ 4. *Be it further enacted*, That the provisions of this Act shall not apply to agricultural products or live stock while in the possession of the producer or raiser.

§ 5. *Be it further enacted*, That any person or persons or corporation that may be injured or damaged by any such arrangement, contract, agreement, trust or combination, described in Section 1 of this Act, may sue for, and recover, in any court of competent jurisdiction in this State, of any person or persons or corporation operating such trust or combination, the full consideration or sum paid by him or them for any goods, wares, merchandise, or articles, the sale of which is controlled by such combination or trust.

§ 6. *Be it further enacted*, That it shall be the duty of the Judge of the Circuit and Criminal Courts of this State especially to instruct grand juries as to the provisions of this Act.

§ 7. *Be it further enacted*, That all laws and parts of laws in conflict with the provisions of this Act be and the same are hereby repealed.

§ 8. *Be it further enacted*, That this Act take effect from and after its passage, the public welfare requiring it.

Passed April 5, 1897.

Approved April 30, 1897.

CASE CONSTRUING STATUTES.

Bailey et al. v. Association of Master Plumbers of City of Memphis.

52 S. W. Rep., 853.

August 15, 1899.

Statement.

The association is a corporation organized by a majority of the plumbers in the city of Memphis, Tenn. A by-law was passed whereby each member was required to report in open meeting each week what work he had been doing, and if such work was done in competition with any other member, the member having done the work was to pay the association a fixed sum, according to a schedule agreed upon. Suit is brought to recover \$444 from members under this by-law.

Opinion of Supreme Court.

“By-laws with such capabilities * * * are clearly obnoxious to the common law, as well as violative of our statutes, which forbid and declare unlawful, null and void ‘all trusts, pools, contracts, arrangements, or combinations’ * * * that have a tendency to destroy or prevent ‘full and free competition in the production, manufacture or sale of any article of legitimate trade’ or that may in any manner ‘injuriously affect the legitimate trade and commerce of the country.’ Whether these by-laws be regarded as a contract, an arrangement, a combination or a trust, one or all,—and we think they partake of the nature of all of them,—there can be no reasonable doubt that they were intended and well calculated to prevent full and free competition in the purchase and sale of articles of legitimate traffic, to influence the prices thereof, and thereby to injuriously affect trade and commerce within the territory contemplated.”

No recovery is allowed.

COMMON-LAW DECISION.

Mallory v. Hanaur Oil Works.

86 Tenn., 598.

April, 1888.

Statement.

The Hanaur Oil Works, a corporation, entered into a contract with three other corporations whereby their business of manufacturing cotton-seed oil should all be put into the

hands of a committee composed of representatives from each of the four corporations. Under this agreement the property of the four corporations was surrendered to the committee, and was managed by them for two years. Now the Hanaur Oil Company wishes to withdraw from the association, and brings this suit to recover possession of its property, claiming that the contract was void.

Opinion.

The contract was for a partnership, and corporations cannot enter into partnership; therefore, the contract was *ultra vires* and void.

The Hanaur Oil Works can obtain possession of its property.

TEXAS.

CONSTITUTIONAL PROVISIONS.

ARTICLE I.

§ 26. Perpetuities and monopolies are contrary to the genius of a free government and shall never be allowed.

ARTICLE X.

§ 5. No railroad or other corporation, or the lessees, purchasers or managers of any railroad corporation, shall consolidate the stock, property or franchises of such corporation with, or lease or purchase the works or franchises of or in any way control any railroad corporation owning or having under its control a parallel or competing line; nor shall any officer of such railroad corporation act as an officer of any other railroad corporation owning or having the control of a parallel or competing line.

§ 6. No railroad company organized under the laws of this state shall consolidate by private or judicial sale or otherwise with any railroad company organized under the laws of any other state or of the United States.

[Adopted, November 24, 1875.]

STATUTES.

LAWS OF 1895, CHAP. 83.

TRUSTS.

AN ACT to define trusts, provide for penalties and punishment of corporations, persons, firms and associations of persons connected with them, and to promote free competition in the state of Texas, and to repeal all laws and parts of laws in conflict with this act.

§ 1. *Be it enacted by the legislature of the state of Texas,* That an act entitled "An act to define trusts and to provide for penalties and punishment of corporations, persons, firms and associations of persons connected with them, and to promote free competition in the state of Texas," approved March

thirty, eighteen hundred and eighty-nine, be so amended as to hereafter read as follows:

§ 1. That a trust is a combination of capital, skill or acts by two or more persons, firms, corporations or associations of persons, or either two or more of them, for either, any or all of the following purposes:

1. To create or carry out restrictions in trade or commerce or aids to commerce, or to create or carry out restrictions in the full and free pursuit of any business authorized or permitted by the laws of this state.

2. To increase or reduce the price of merchandise, produce or commodities.

3. To prevent competition in manufacture, making, transportation, sale or purchase of merchandise, produce or commodities, or to prevent competition in aids to commerce.

4. To fix at any standard or figure, whereby its price to the public shall be in any manner controlled or established, any article or commodity of merchandise, produce or commerce intended for sale, use or consumption in this state.

5. To make or enter into or execute or carry out any contract, obligation or agreement of any kind or description by which they shall bind or have bound themselves not to sell, dispose of or transport any article or commodity, or article of trade, use, merchandise, commerce or consumption below a common standard figure, or by which they shall agree in any manner to keep the price of such article, commodity or transportation at a fixed or graded figure, or by which they shall in any manner establish or settle the price of any article or commodity or transportation between them or themselves and others to preclude a free and unrestricted competition among themselves or others in the sale or transportation of any such article or commodity, or by which they shall agree to pool, combine or unite any interest they may have in connection with the sale or transportation of any such article or commodity that its price might in any manner be affected.

§ 2. That any corporation holding a charter under the laws of the state of Texas which shall violate any of the provisions of this act shall thereby forfeit its charter and franchise, and its corporate existence shall cease and determine.

§ 3. For a violation of any of the provisions of this act by any corporation mentioned herein, it shall be the duty of the attorney-general or district or county attorney, or either of

them, upon his own motion and without leave or order of any court or judge, to institute suit or quo warranto proceedings in Travis county, at Austin, or at the county seat of any county in the state where such corporation exists, does business or may have a domicile, for the forfeiture of its charter rights and franchise and the dissolution of its corporate existence.

§ 4. Every foreign corporation violating any of the provisions of this act is hereby denied the right and prohibited from doing any business within this state, and it shall be the duty of the attorney-general to enforce this provision by injunction or other proper proceedings in the district court of Travis county, in the name of the state of Texas.

§ 5. That the provisions of chapter forty-eight, general laws of this state, approved July nine, eighteen hundred and seventy-nine, to prescribe the remedy and regulate the proceedings by quo warranto, et cetera, shall, except in so far as they may conflict herewith, govern and control the proceedings when instituted to forfeit any charter under this act.

§ 6. If any person shall be or may become engaged in any combination of capital, skill or acts by two or more persons, firms, corporations or associations of persons, or of either two or more of them, for either, any or all of the following purposes:

1. To create or carry out restrictions in trade or commerce or aids to commerce, or to create or carry out restrictions in the full and free pursuit of any business authorized or permitted by the laws of this state.

2. To increase or reduce the price of merchandise, produce or commodities.

3. To prevent competition in manufacture, making, transportation, sale or purchase of merchandise, produce or commodities, or to prevent competition in aids to commerce.

4. To fix at any standard or figure whereby its price to the public shall be in any manner controlled or established any article or commodity of merchandise, produce or commerce intended for sale, use or consumption in this state.

5. To make or enter into or execute or carry out any contract, obligation or agreement of any kind or description, by which they shall bind or have bound themselves not to sell, dispose of, or transport any article or commodity, or article of trade, use, merchandise, commerce or consumption below a

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common standard figure, or by which they shall agree in any manner to keep the price of such article, commodity or transportation at a fixed or graduated figure, or by which they shall in any manner establish or settle the price of any article or commodity or transportation between them or themselves and others to preclude a free and unrestricted competition among themselves and others in the sale or transportation of any such article or commodity, or by which they shall agree to pool, combine or unite any interest they may have in connection with the sale or transportation of any such article or commodity that its price may in any manner be affected, or aid or advise in the creation or carrying out of any such combination, or who shall as principal, manager, director, agent, servant or employe, or in any other capacity, knowingly carry out any of the stipulations, purposes, prices, rates, directions, conditions or orders of such combinations shall be punished by fine of not less than fifty nor more than five thousand dollars, and by imprisonment in the penitentiary not less than one nor more than ten years, or by either such fine or imprisonment. Each day during a violation of this provision shall constitute a separate offense.

§ 7. In any indictment for an offense named in this act it is sufficient to state the effects or purposes of the trust or combination, and that the accused was a member of, acted with or in pursuance of it, without giving its name or description, or how, when or where it was created.

§ 8. In prosecutions under this act it shall be sufficient to prove that a trust or combination as defined herein exists and that the defendant belonged to it or acted for or in connection with it, without proving all the members belonging to it or proving or producing any article of agreement or any written instrument on which it may have been based, or that it was evidenced by any written instrument at all. The character of the trust or combination alleged may be established by proof of its general reputation as such.

§ 9. Persons out of the state may commit and be liable to indictment and conviction for committing any of the offenses enumerated in this act, which do not in their commission necessarily require a personal presence in this state, the object being to reach and punish all persons offending against its provisions, whether within or without the state.

§ 10.¹ Each and every firm, person, corporation or association of persons, who shall in any manner violate any of the provisions of this chapter shall forfeit not less than two hundred dollars nor more than five thousand dollars for every such offense, and each day each firm, person, corporation or association of persons shall continue to do so shall be a separate offense; the penalty in such case may be recovered in the name of the state of Texas in any county where the offense is committed or where either of the offenders reside, or in Travis county, and it shall be the duty of the attorney-general or the district or county attorney to prosecute for and recover the same.

§ 11. That any contract or agreement in violation of the provisions of this act shall be absolutely void and not enforceable either in law or equity.

§ 12. That the provisions hereof shall be held cumulative of each other and of all other laws in any way affecting them now in force in this state: *Provided*, This act shall not be held to apply to live-stock and agricultural products in the hands of the producer or raiser, nor shall it be understood or construed to prevent the organization of laborers for the purpose of maintaining any standard of wages.

§ 13. That nothing in this act shall be held or construed to affect or destroy any rights which may have accrued, or to affect the right of the state to recover penalties, or to affect the right of the state to forfeit charters of domestic corporations and prohibit foreign corporations from doing business in this state, or affect the right of the state to maintain prosecutions for violations thereof under any law of this state relating to trusts, for acts heretofore done.

§ 14. Any court, officer or tribunal having jurisdiction of the offense defined in this act, or any district or county attorney or grand jury may subpoena persons and compel their attendance as witnesses to testify as to the violation of any of the provisions of the foregoing sections. Any person so summoned and examined shall not be liable to prosecution for any violation of said sections about which he may testify fully and without reservation.

§ 15. All laws or parts of laws in conflict with this act are hereby repealed.

¹ Section 10 is given as amended by chapter 172 of the Laws of 1899.

§ 16. Whereas, the people of this state are without an adequate remedy against trusts, therefore an emergency and imperative public necessity exists requiring that the constitutional rule which requires that all bills shall be read on three several days be suspended, and it is so enacted.

Approved April 30, 1895.

LAWS OF 1899, CHAP. 146.

ANTI-TRUST LAW.

AN ACT to prohibit pools, trusts, monopolies and conspiracies to control business and prices of articles; to prevent the formation or operation of pools, trusts, monopolies and combinations of charters of corporations that violate the terms of this act, and to authorize the institution of prosecutions and suits therefor.

Be it enacted by the Legislature of the State of Texas:

§ 1. Any corporation organized under the laws of this or any other State or country, and transacting or conducting any kind of business in this State, or any partnership, or individual, or other association of persons whatsoever, who shall create, enter into, become a member of or a party to any pool, trust, agreement, combination, confederation or understanding with any other corporation, partnership, individual or any other person or association of persons, to regulate or fix the price of any article of manufacture, mechanism, merchandise, commodity, convenience, repair, any product of mining, or any article or thing whatsoever, or the price or premium to be paid for insuring property against loss or damage by fire, lightning or storm, or to maintain said price when so regulated, or fixed, or shall enter into, become a member of or a party to any pool, agreement, combination, contract, association or confederation to fix or limit the amount or quantity of any article of manufacture, mechanism, merchandise, commodity, convenience, repair, any product of mining, or any article or thing whatsoever, or the price or premium to be paid for insuring property against loss or damage by fire, lightning, storm, cyclone, tornado, or any other kind of policy issued by any corporation, partnership, individual, or association of persons aforesaid, shall be deemed and adjudged guilty of a conspiracy to defraud, and to be subject to the penalties as provided by this act.

§ 2. A "monopoly" is any union or combination or consolidation or affiliation of capital, credit, property, assets, trade, custom, skill or acts, or of any other valuable thing or possession, by or between persons, firms or corporations, or association of persons, firms or corporations, whereby any one of the purposes or objects mentioned in this act is accomplished or sought to be accomplished, or whereby any one or more of said purposes are promoted or attempted to be executed or carried out, or whereby the several results described herein are reasonably calculated to be produced; and a "monopoly," as thus defined and contemplated, includes not merely such combinations by and between two or more persons, firms or corporations acting for themselves, but is especially defined and intended to include all aggregations, amalgamations, affiliations, consolidations or incorporations of capital, skill, credit, assets, property, custom, trade, or other valuable thing or possession, whether effected by the ordinary methods of partnership or by actual union under the legal form of a corporation or an incorporated body resulting from the union of one or more distinct firms or corporations, or by the purchase, acquisition or control of shares or certificates of stock or bonds, or other corporate property or franchises, and all corporations or partnerships that have been or may be created by the consolidation or amalgamation of the separate capital, stock, bonds, assets, credit, properties, custom, trade or corporate or firm belongings of two or more firms or corporations or companies are especially declared to constitute monopolies within the meaning of this act, if so created or entered into for any one or more of the purposes named in this act; and a "monopoly," as defined in this section, is hereby declared to be unlawful and against public policy, and any and all persons, firms, corporations or association of persons engaged therein shall be deemed and adjudged guilty of a conspiracy to defraud, and shall be subject to the penalties prescribed in this act.

§ 3. If any person, persons, company, partnership, association or corporation, engaged in the manufacture of any article of commerce or consumption from the raw material produced or mined in this State, shall, with the intent or purpose of driving out competition, or for the purpose of financially injuring competitors, sell at less than the cost of manufacture, or give away their manufactured products, for the purpose of driving out competition or financially injuring

competitors engaged in the manufacture and refining of raw material in this State, said person, persons, company, partnership, association or corporation resorting to this method of securing a monopoly in the manufacture, refining and sale of the finished product produced or mined in this State, shall be deemed guilty of a conspiracy to form or secure a trust or monopoly in restraint of trade, and on conviction shall be subject to the penalties of this act.

§ 4. If any person, persons, company, partnership, association, corporation or agent engaged in the manufacture or sale of any article of commerce or consumption produced, manufactured or mined in this State or elsewhere, shall, with the intent or purpose of driving out competition, or for the purpose of financially injuring competitors, sell within this State at less than cost of manufacture or production, or sell in such a way, or give away within this State, their products for the purpose of driving out competition or financially injuring competitors engaged in similar business, said person, persons, company, partnership, association, corporation or agent resorting to this method of securing a monopoly within this State in such business, shall be deemed guilty of a conspiracy to form or secure a trust or monopoly in restraint of trade, and on conviction thereof shall be subject to the penalties of this act.

§ 5. Any person, partnership, firm or association, or any representative or agent thereof, or any corporation or company, or any officer, representative or agent thereof, violating any of the provisions of this act shall forfeit not less than two hundred dollars nor more than five thousand dollars for every such offense, and each day such person, corporation, partnership or association shall continue to do so shall be a separate offense, the penalties in such cases to be recovered by an action in the name of the State, at the relation of the Attorney-General or the district or county attorney; the moneys thus collected to go into the State treasury, and to become a part of the general fund, except as hereinafter provided.

§ 6. If any two or more persons or corporations who are engaged in buying or selling any article of commerce, manufacture, mechanism, merchandise, commodity, convenience, repair, any product of mining or any article or thing whatsoever, shall enter into any pool, trust, agreement, combination, confederation, association or understanding to control

or limit the trade in any such article or thing; or to limit competition in such trade by refusing to buy from or sell to any other person or corporation any such article or thing aforesaid, for the reason that such other person or corporation is not a member of or a party to such pool, trust, agreement, combination, confederation, association or understanding; or shall boycott or threaten any person or corporation for buying from or selling to any other person or corporation who is not a member of or a party to such pool, trust, agreement, combination, confederation, association or understanding any such article or thing aforesaid, it shall be a violation of this act; and any person, firm, corporation or association of persons committing such violation shall be deemed and adjudged guilty of a conspiracy to defraud, and shall be subject to the penalties prescribed in this act.

§ 7. Any corporation created or organized by or under the laws of this State, which shall violate any of the provisions of the preceding sections of this act, shall thereby forfeit its corporate rights and franchises; and its corporate existence shall, upon proper proof being made thereof in any court of competent jurisdiction in the State, be by the court declared forfeited, void and of non-effect, and shall thereupon cease and determine; and any corporation created or organized by or under the law of any other State or country, which shall violate any of the provisions of the preceding sections of this act shall thereby forfeit its right and privilege thereafter to do any business in this State, and upon proper proof being made thereof in any court of competent jurisdiction in the State, its rights and privileges to do business in this State shall be declared forfeited; and in all proceedings to have such forfeiture declared, proof that any person who has been acting as agent of such foreign corporation in transacting its business in this State, has been, while acting as such agent, and in the name, behalf, or interest of such foreign corporation, violating any provisions of the preceding sections of this act, shall be received as prima facie proof of the act of the corporation itself; and it shall be the duty of the clerk of said court to certify the decree thereof to the Secretary of State, and if it be an insurance company, to the Commissioner of Insurance, Statistics and History of the State, who shall take notice and be governed thereby as to the corporate powers and rights of said corporation.

§ 8. It shall be the duty of the Secretary of State, on or about the first day of July of each year, and at such other

times as he shall deem necessary, to address to the president, secretary or treasurer of each incorporated company doing business in this State a letter of inquiry as to whether the said corporation has all or any part of its business or interest in or with any trust, combination or association of persons or stockholders, as named in the preceding provisions of this act, and to require an answer under oath of the president, secretary or treasurer, or any director of said company. A form of affidavit shall be enclosed in said letter of inquiry, as follows:

AFFIDAVIT.

STATE OF TEXAS, *County of* ———.

I, ———, do solemnly swear that I am the ——— (president, secretary, treasurer or director) of the corporation known and styled ———, duly incorporated under the laws of ———, on the ——— day of ———, 19——, and now transacting or conducting business in the State of Texas, and that I am duly authorized to represent said corporation in making this affidavit, and I do further solemnly swear that the said ———, known and styled as aforesaid, has not since the ——— day of ——— (naming the day upon which this act takes effect), created, entered into or become a member of or a party to, and was not, on the ——— day of ———, nor at any day since that date, and is not now a member of or a party to any pool, trust, agreement, combination, confederation or understanding, with any other corporation, partnership, individual, or any other person, or association of persons, to regulate or fix the price of any article of manufacture, mechanism, merchandise, commodity, convenience, repair, any product of mining, or any article or thing whatsoever, or the price or premium to be paid for insuring property against loss or damage by fire, lightning, storm, cyclone, tornado, or any other kind of policy issued by the parties aforesaid; and that it has not entered into or become a member of, or a party to, any pool, trust, agreement, contract, combination or federation, to fix or limit the amount of supply or quantity of any article of manufacture, mechanism, merchandise, commodity, convenience, repair, or any product of mining, or any article or thing whatsoever, or the price or premium to be paid for insuring property against loss or damage by fire, lightning, storm, cyclone, tornado, or any other kind of policy issued by the parties

aforesaid; and that it has not issued, and does not own any trust certificates for any corporation, agent, officer or employe, or for the directors or stockholders of any corporation, has not entered into, and is not now in any combination, contract or agreement with any person or persons, corporation or corporations, or with any stockholders, or directors thereof, the purpose and effect of which said combination, contract or agreement would be to place the management or control of such combination or combinations, or the manufactured product thereof, in the hands of any trustee or trustees, with the intent to limit or fix the price, or lessen the production and sale of any article of commerce, use or consumption, or to prevent, restrict, or diminish the manufacture or output of any such article; that it has not entered into any conspiracy, defined in the preceding sections of this act, to form or secure a trust or monopoly in restraint of trade; that it has not been since January 31, A. D. 1900, and is not now a monopoly by reason of any conduct on its part which would constitute it a monopoly under the provisions of Sections 2, 3, 4, 5, 6, 10 and 11, of this act, and is not the owner or lessee of a patent to any machinery intended, used or designed for manufacturing any raw material or preparing the same for market by any wrapping, baling or other process, and while leasing, renting or operating the same refuses or fails to put the same on the market for sale; that it has not issued, and does not own any trust certificates, and has not, for any corporation or any agent, officer or employe thereof, or for the directors or stockholders thereof, entered into, and is not now in any combination, contract or agreement with any person or persons, corporation or corporations, or with the stockholders, directors or any officer, agent or employe of any corporation or corporations, the purpose and effect of which combination, contract or agreement would be a conspiracy to defraud, as defined in Section 1 of this act, or to create a monopoly, as defined in Sections 2, 3, 4, 5, 6, 10 and 11 of this act.

[President, Secretary, Treasurer or Director.]

Subscribed and sworn to before me, a _____ within
and for the county of _____, this _____ day of _____,
19—.

[SEAL.] _____.

And on refusal to make oath, in answer to said inquiry, or on failure to do so within thirty days from the mailing thereof, such failure shall be *prima facie* proof that such incorporated company is transacting business in the State of Texas, and has violated the provisions of this act, every day after the expiration of thirty days from the mailing of said letter of inquiry, the Secretary of State shall certify to the prosecuting attorney of the district or county wherein said corporation is located, and it shall be the duty of such prosecuting attorney, at his earliest practicable moment, in the name of the State, and at the relation of said prosecuting attorney, to proceed against such corporation, if a domestic corporation, for the recovery of the money forfeit provided for in this act, and also for the forfeiture of its charter or certificate of incorporation. If a foreign corporation, to proceed against such corporation for the recovery of the money forfeit provided for in this act, and to forfeit its right to do business in this State: *And provided*, That whatever money, bonds or other securities may be on deposit in this State shall remain subject to the decision of said court to secure whatever penalties or costs may be adjudged against said corporation or individual. *It is provided, however*, That all parties making the affidavit provided for in this section shall be exempt from criminal prosecution for any violation of law that may be disclosed by such affidavit. *It is further provided*, That the Secretary of State shall, from time to time, when he may have reason to believe that individuals or partnerships are doing business in this State in violation of this act, address the letter of inquiry herein provided for to such individuals or partnerships and require of them the same answers under oath prescribed in this section for the officers of corporations, the affidavit to which must be made by the individual addressed, or some member of the partnership addressed; the form of affidavit herein prescribed, with such changes as may be necessary to make it applicable to individuals and partnerships shall be inclosed in said letter of inquiry.

§ 9. It shall be the duty of the Attorney-General and the prosecuting attorney of each district or county, respectively, to enforce the provisions of this act. The Attorney-General and the prosecuting attorney shall institute and conduct all suits begun in the district courts, and upon appeal the

Attorney-General shall prosecute said suits in the courts of Civil Appeals and Supreme Court. The prosecuting attorney shall receive for his compensation one-fourth of the penalty collected; *Provided*, The fees allowed the prosecuting attorney representing the State, provided for in this section, shall be over and above the fees allowed him by the general fee bill now in force.

§ 10. All actions authorized and brought under this act shall have precedence on motion of the prosecuting attorney or Attorney-General of all other business, civil and criminal, except criminal cases where the defendants are in jail.

§ 11. Each corporation, co-partnership, firm or individual who may be the owner or lessee of a patent to any machinery intended, used or designed for manufacturing any raw materials or preparing the same for market by any wrapping, baling or other process, who shall lease, rent or operate the same in their own name and refuse or fail to put the same on the market for sale, shall be adjudged a monopoly, and be subject to all the pains and penalties provided in this act.

§ 12. The sale, delivery or disposition of any of the articles, commodities or things hereinbefore mentioned by any individual, company or corporation transacting business contrary to the provisions of this act, within this State or elsewhere, is hereby declared to be unlawful and contrary to public policy, and the purchaser of any article or commodity from any such offending individual, company or corporation shall not be liable for the price or payment thereof, and may plead this act as a defense to any suit for the price or payment, whether the purchase was made directly from the individual, company or corporation so unlawfully transacting business, or indirectly from one who acted for such individual, company or corporation as agent, representative, solicitor or canvasser: *And provided further*, That where any money or other thing of value is paid to such individual, company or corporation so unlawfully transacting business, its agent, representative, solicitor or canvasser, the person so paying the same may recover back the amount of the money or the value of the thing so paid.

§ 13. The following corporations, co-partnerships, firms or individuals are also adjudged a monopoly, and subject to all the pains and penalties provided in this act:

Every corporation, co-partnership, firm or individual which may gather items of news or press dispatches for sale to news-

papers and which shall refuse to sell said items of news or press dispatches to more than one newspaper to a stated number of inhabitants in any city, town or subdivision of the State of Texas, or within a certain radius of territory. Every association of newspapers formed for the purpose of exchanging items of news and press dispatches which may require of its members under pain of forfeiting their membership, that they do not sell to or exchange with newspapers not members of said association any items of news or press dispatches.

§ 14. The provisions of the foregoing sections, and the pains and penalties provided for for violations of this act shall be held and construed to be cumulative to all laws now in force in this State. *And provided*, That the provisions of this act shall not exempt from punishment or forfeiture any person, firm, association of persons or corporation, who may have violated or offended against any law now in existence that may be or may be construed to be repealed by this act or in conflict herewith. *And provided further*, That nothing in this act shall be deemed or construed to affect any suits or prosecutions now pending or hereafter to be instituted upon any cause of action, forfeiture or penalty accruing or to accrue prior to the date of the taking effect of this act, but all such rights to maintain, institute or prosecute all such causes of action are hereby reserved to the State, in the same manner and with the same effect as if this law had not been passed: *Provided further*, That this act shall take effect from and after January 31, A. D. 1900.

§ 15. The near approach of the end of the session, and the fact that we now have no adequate anti-trust law upon the statutes, and the importance of such legislation, create an emergency and imperative public necessity that the constitutional rule requiring bills to be read on three several days be suspended, and it is so enacted.

Approved May 25, 1899.

CASES CONSTRUING STATUTES.

Queen Insurance Co. et al. v. State ex rel. Attorney-General.

24 S. W. Rep., 397.

December 14, 1893.

Statute construed.

Texas Laws of 1889, chapter 117, declares a trust to be a combination of capital, skill or acts to create or carry out

restrictions in trade or to fix or increase the price of commodities. It states the punishment for violating the act; but it does not expressly say that a trust shall be unlawful.

Statement.

Fifty-seven insurance companies formed a combination to fix uniform rates of insurance and agents' commissions throughout the state. Suit was brought to restrain this combination. The lower court said the anti-trust law is void because it does not expressly prohibit trusts; but it held the combination illegal at common law, and therefore granted the injunction.

The combination appealed.

Opinion.

The statute shows that the legislature intended to make trusts unlawful, hence, it is not void. The fact that it does not expressly say trusts shall be unlawful is immaterial.

The legislature used the term "restrictions in trade" in a narrow sense, meaning restriction in traffic, and it does not include insurance; neither does the term "commodities" cover insurance; therefore this combination is not a violation of the statute.

The public is not so interested in insurance as to make a combination among insurance companies illegal at common law.

The injunction is dissolved.

Anheuser-Busch Brewing Association v. Houck et al.

27 S. W. Rep., 692, and 30 S. W. Rep., 869. June 13, 1894.

Statute construed.

Texas Laws of 1889, chapter 117, forbids combinations to prevent competition in the purchase, sale or transportation of merchandise.

Statement.

All the wholesale beer dealers in El Paso, Tex., enter into an agreement whereby all the business is to be managed by one board of managers, and the profits divided among the members.

Plaintiff agrees to supply the combination, and no one else in El Paso, with keg beer. Plaintiff supplies the beer for a time but refuses to supply more. Suit is brought to recover pay for the beer supplied. The combination seeks to avoid

payment for the beer already supplied, and to recover damages because more beer is not furnished.

Opinion.

The combination is in violation of the anti-trust law; and plaintiff's agreeing to sell beer to no one else in El Paso shows that the contract between the plaintiff and the combination is intended to aid the illegal object of the combination, and is, therefore, void.

Plaintiff recovers nothing for the beer.

The combination recovers nothing for the breach of contract.

Texas and Pacific Coal Co. v. Lawson.

89 Texas, 394.

March 26, 1896.

Statement.

The coal company, which was operating the coal mining business upon its large tract of land and having many employees residing thereon, made a contract with Lawson, leasing him for five years premises on which to carry on the business of selling liquor. It agreed to lease to no other person for the same purpose and to permit no one else to carry on said business upon its land; also to issue time checks to its employees, which checks were to be redeemed weekly when taken up by Lawson. The company was to receive as rent two-thirds of the profits of the saloon business. A question arises as to whether or not the contract is legal.

Opinion.

"The statute ignores the common-law distinction between restrictions which are reasonable and those which are not, and commodities which are of prime necessity and those which are not." The contract provided that the parties should associate both their capital and acts to prevent competition in the trade of retailing spirituous liquors. Under the statute, the contract is void.

Welch et al., v. Phelps and Bigelow Windmill Co.

36 S. W. Rep., 71.

June 8, 1896.

Statement.

Plaintiff and defendant entered into an agreement whereby plaintiff was to sell windmills for defendant, for a certain price, in a certain territory, and to sell no other windmills.

Defendant was to allow no one else to sell windmills in that territory, to have title to the windmills while in plaintiff's possession and to ship mills to plaintiff as he needed them. Was this contract within the trust law?

Opinion.

The statute was to prohibit two or more persons from combining their skill or their capital or their acts. The defendant here owned all these windmills, so there was no union of "capital, skill or acts." "It was not the purpose of the statute to interpose any obstacle to a principal's contracting with his agent with reference either to the terms or the subject-matter of the agency."

The contract is legal.

Hathaway v. The State.

36 Texas Cr. Rep., 261.

June 26, 1896.

Statement.

Plaintiff was an agent of the Waters-Pierce Oil Company, and this company was connected with the Standard Oil Trust; but there was no proof that plaintiff knew of this combination. He was convicted of the crime of conspiracy against trade, and fined \$50. He appeals.

Opinion.

The anti-trust law has been held constitutional by the Supreme Court in several cases, therefore, it will now be assumed that it is constitutional; but to convict one under this law it must be proved that he had knowledge of the conspiracy when he aided it.

The judgment of conviction is reversed.

Texas Brewing Co. v. Templeman et al.

38 S. W. Rep., 27.

December 3, 1896.

Statement.

The Texas Brewing Company agreed to sell beer to W. N. Norwood & Co. and to furnish a delivery wagon and a storage vault, the last two to remain the property of the brewing company. In turn W. N. Norwood & Co. agreed to furnish a place for the vault, to pay for the beer sold them in thirty days from shipment, and to handle no other beer than that of the Texas Brewing Company. The Texas Brewing Company brings this suit to recover a balance due it for the beer sold.

Opinion.

The contract is to carry out restrictions in trade, and to prevent competition in the sale of commodities, and is a trust contract.

Plaintiff can not recover the balance due for the beer.

Fuqua et al. v. Pabst Brewing Co.

38 S. W. Rep., 29.

December 14, 1896.

Statement.

The Pabst Brewing Company, of Wisconsin, and Kingsbury, of Texas, agreed that said company should sell beer in Amarillo, Tex., only to Kingsbury; and that Kingsbury should buy beer only of said company. Kingsbury owes \$1,164.48 for beer furnished him under this agreement. The company brings suit to collect it. Illegality of the contract is pleaded in defense.

Opinion.

Shipping an article into the state and selling it in the original package is interstate commerce. Therefore, a contract for only that can not be affected by the state anti-trust law. However, in the case at bar there is this legal part plus an illegal part; namely, that Kingsbury is to buy beer of no one but the Pabst Brewing Company, and that said company is to sell beer to no one in Amarillo except Kingsbury. In this contract some of the stipulations "being lawful and the others unlawful, the taint of illegality affects and destroys the whole."

Plaintiff can not recover.

Waters-Pierce Oil Co. v. State.

44 S. W. Rep., 936.

March 9, 1898.

Statute construed.

The Texas Laws of 1895, chapter 83, makes all trusts and combinations in restraint of trade criminal. It provides, however, that the act shall not be held to apply to live stock and agricultural products in the hands of the producer or raiser, nor shall it be understood or construed to prevent the organization of laborers for the purpose of maintaining any standard of wages.

The act provides that every foreign corporation violating this law shall be prohibited from doing business in the state.

Statement.

Plaintiff, a foreign corporation, had been given permission to do business in Texas for ten years. While doing business under this permit it violated the anti-trust law by making contracts with various dealers in oils whereby they agreed to buy and sell plaintiff's oils exclusively, and not to sell any oil to a person buying of another corporation, and for this reason the court enjoined it from doing any more business in the state, except interstate commerce. Plaintiff appeals claiming the law is unconstitutional on two grounds:

1. It deprives the owner of his property without due process of law.

2. It discriminates between persons without cause, and therefore falls within the prohibition of the fourteenth amendment where it says: "Nor shall any state deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

Opinion.

1. To prohibit combinations in restraint of trade, is within the police power of the state, and the fourteenth amendment is not meant to limit the proper exercise of this power.

2. The welfare of the state was in danger from combinations in restraint of trade; but certain classes of such combinations were not endangering the public welfare, and it was constitutional for such to be exempted from the operation of the law.

The injunction stands prohibiting plaintiff from doing business, other than interstate commerce, in the state of Texas.

Wiggins v. Bisso.

47 S. W. Rep., 637.

October 31, 1898.

Statement.

Wiggins and Bisso entered into partnership for the purpose of forming a combination with the St. Louis Brewing Association to increase the price of beer and to prevent competition in the transportation and sale of beer. Wiggins received all the profits of the partnership to the amount of \$7,980, and refuses to pay Bisso his share. Bisso sues for an accounting.

Opinion.

The court can not give an accounting without investigating unlawful acts of the parties, and this it will not do. It will leave the parties where it found them.

The accounting is denied.

San Antonio Gas Co. v. State.

54 S. W. Rep., 289.

Circuit Court of Appeals of Texas.

November 1, 1899.

Statement.

All the electric railways, electric light and gas companies in San Antonio, Tex., agreed to charge certain car fare, and not to compete with each other and to consolidate after they had obtained from the city an extension of all their franchises until 1940. The franchises were extended, and other acts done pursuant to the agreement. The State brought an action against the San Antonio Gas Company, a party to the said agreement, to forfeit its charter. Judgment for the State in the lower court, and plaintiff appeals.

Opinion on appeal.

A trust is defined in the statutes as "a combination of capital, skill, or acts by two or more persons, firms or corporations" for purposes enumerated, one being "to increase or reduce the price of merchandise, produce or commodities." "If the combination was made, and its object was in restraint of trade and to create a monopoly, the statute denounces it no matter if the immediate result of the combination may be the temporary reduction of prices. To fix, by combination, a rate lower than one that has prevailed, carries with it the power and ability to establish higher ones, and the object of the statute is to free business and commerce from being controlled by combinations. * * * The law does not look to the results." It is settled that the trust legislation is constitutional; and a conspiracy was formed within its terms; therefore, the lower court did right in forfeiting the charter.

UTAH.
CONSTITUTIONAL PROVISION.

ARTICLE 12.

§ 20. Any combination by individuals, corporations, or associations, having for its object or effect the controlling of the price of any products of the soil, or of any article of manufacture or commerce, or the cost of exchange or transportation, is prohibited, and hereby declared unlawful, and against public policy. The legislature shall pass laws for the enforcement of this section by adequate penalties, and in case of incorporated companies, if necessary for that purpose, it may declare a forfeiture of their franchise.

[Adopted, May 8, 1895.]

STATUTE.

REVISED STATUTES OF 1898, TITLE 54.

POOLS AND TRUSTS.

§ 1752. **Unlawful combination.**—Any combination by persons having for its object or effect the controlling of the prices of any professional services, any products of the soil, any article of manufacture or commerce, or the cost of exchange or transportation, is prohibited and declared unlawful.

§ 1753 *id.* **Members guilty of conspiracy to defraud.**—Any person or association of persons who shall create, enter into, become a member of, or a party to, any pool, trust, agreement, combination, confederation, or understanding with any other person or persons, to regulate or fix the price of any article of merchandise or commodity; or shall enter into, become a member of, or a party to, any pool, trust, agreement, contract, combination, or confederation to fix or limit the amount or quantity of any article, commodity, or merchandise to be manufactured, mined, produced, or sold in this state, shall be deemed and adjudged guilty of a conspiracy to defraud, and be subject to punishment as hereinafter provided.

§ 1754. **Trusts declared unlawful.**—It shall not be lawful for any corporation to issue or to own trust certificates; or for any corporation, agent, officer, or employee, or the direct-

ors or stockholders of any corporation to enter into any combination, contract, or agreement with any person or persons, the purpose or effect of which combination, contract, or agreement shall be to place the management or control of said combination or combinations, or the manufactured product thereof, in the hand of any trustee or trustees, with the intent to limit or fix the price, or lessen the production and sale of any article of commerce, use, or consumption, or to prevent, restrict, or diminish the manufacture or output of any such article, or to monopolize any part of the trade or commerce within this state.

§ 1755. Penalties, firms and corporations.—If a corporation, a company, a firm, or association, shall be found guilty of a violation of any provision of this title, it shall be punished by a fine in any sum not less than one hundred dollars nor more than two thousand dollars for the first offense; and for the second offense not less than five hundred dollars nor more than five thousand dollars; and for the third offense, not less than five thousand dollars nor more than ten thousand dollars; and for every subsequent offense shall be liable to a fine of fifteen thousand dollars.

§ 1756 id. Individuals.—Any president, manager, director, or other officer, agent, or receiver of any corporation, company, firm or association, or any member of any company, firm, or association, or any individual found guilty of a violation of any provision of this title, may be punished by a fine of not less than one hundred dollars nor more than one thousand dollars, or by confinement in the county jail not more than one year, or by both, in the discretion of the court before which such conviction may have been had.

§ 1757. Unlawful contracts void.—Any contract or agreement in violation of any provision of this title shall be absolutely void.

§ 1758. Corporate franchise forfeited.—Any corporation organized or existing under the laws of this state which shall violate any provision of this title shall thereby forfeit its corporate rights and franchises, and its corporate existence shall thereupon cease and determine.

§ 1759 id. Notice to corporation.—It shall be the duty of the secretary of state, upon satisfactory evidence that any corporation or association of persons, incorporated or operating under the laws of this state, has entered into any

trust, combination or association, as mentioned in the preceding provisions of this title to give notice to such corporation that unless it withdraws from and severs all business connections with said trusts, combination, or association, its corporate right and franchise will be revoked at the expiration of thirty days from the date of such notice.

§ 1760 **id. Attorney-general to bring action, when.**—At the expiration of thirty days, if such withdrawal or severance be not theretofore made, the secretary of state shall cause a certified statement of the facts to be filed in the office of the attorney-general of the state, who shall commence, or direct any county attorney in the state to commence, an action, in any district court of the state of competent jurisdiction, to forfeit and revoke the corporate rights and franchises of such corporation. On the final decision of the same, should the defendant be found guilty of a violation of any of the provisions of this title, the court shall render judgment that the charter, corporate rights, and franchises of such corporation be revoked and the secretary of state shall thereupon make publication of such revocation in four newspapers in general circulation in four of the largest cities of the state.

§ 1761. **Guilty person liable for treble damages.**—In case any person or persons, shall do, cause to be done, or permit to be done, any act, matter, or thing in this title prohibited or declared to be unlawful, such person or persons shall be liable to the person or persons injured thereby for treble the amount of damages sustained in consequence of any such violation.

§ 1762. **"Person" includes "corporation."**—The words "person," or "persons," wherever used in this title shall be deemed to include corporations, companies, and associations, existing under or authorized by the laws of either the United States, or any of the territories, any state or any foreign country.

WASHINGTON.

CONSTITUTIONAL PROVISION.

ARTICLE 12.

§ 22. Monopolies and trusts shall never be allowed in this state, and no incorporated company, copartnership, or association of persons in this state shall directly or indirectly combine or make any contract with any other incorporated company, foreign or domestic, through their stockholders, or the trustees, or assignees of such stockholders, or with any copartnership or association of persons, or in any manner whatever, for the purpose of fixing the price or limiting the production or regulating the transportation of any product or commodity. The legislature shall pass laws for the enforcement of this section by adequate penalties, and in case of incorporated companies, if necessary for that purpose, may declare a forfeiture of their franchise.

[Adopted, 1889.]

WISCONSIN.

STATUTES.

LAWS OF 1893, CHAP. 219.

AN ACT to protect trade and commerce against unlawful trusts and monopolies.

The people of the State of Wisconsin, represented in Senate and Assembly, do enact as follows:

§ 1. Every contract or combination, in the nature of a trust or conspiracy in restraint of trade or commerce, is hereby declared illegal.

§ 2. Every person who shall monopolize, or attempt to monopolize, or combine, or conspire with any other person or persons to monopolize any part of the trade or commerce in this state, shall be deemed guilty of violating the provisions of this act, and upon conviction thereof shall forfeit for each such violation not less than fifty dollars, nor more than three thousand dollars, together with the cost of prosecuting such forfeiture; such forfeiture and costs to be collected as is now provided by statute for the collection of forfeitures.

§ 3. Jurisdiction is hereby conferred on the several circuit courts of this state to prevent and restrain, by injunction or otherwise, any violations of the provisions of this act; and it shall be the duty of the several district attorneys of the several counties in this state, upon the advice of the attorney-general, who may appear as counsel in such case, to institute such actions or proceedings as the attorney-general may or shall deem necessary to prevent or restrain any violation of this act. Such proceedings shall be by way of information or complaint, as in ordinary actions, setting forth the case and grounds for the interference of the court, and praying that such violations, whether continuing or intended, shall be enjoined or otherwise prohibited. When the parties complained of or informed against shall have been duly notified of and cited to answer such information or complaint, the court shall proceed as soon as may be, in accordance with its rules and practice, to the hearing and determination of the

case; and pending such information or complaint, and before final judgment, the court may at any time, upon proper notice, make such temporary restraining order, injunction or prohibition as shall be just in the premises.

§ 4. Whenever it shall appear to the court before which any examination under section three, of this act, may be pending, that the ends of justice require that other parties should be brought before the court, the court may cause them to be summoned in such manner as the court shall direct.

§ 5. Any person transacting or doing business within this state, who shall be injured in his business or property by any other person or corporation, by reason of anything forbidden or declared to be unlawful by this act, may recover the damages by him sustained, and costs of suit.

§ 6. The examination of any party, or in case a corporation be the party, the examination of the president, secretary or other proper officer or general managing agent of such corporation, or any person acting for another or acting for such corporation or partnership, otherwise than as a witness on a trial, may be taken by deposition at the instance of the state of Wisconsin, in any action or proceeding under this act, at any time after the commencement thereof and before final judgment. Such deposition shall be taken before a judge at chambers on a previous notice to such party and any other adverse party, or their respective attorneys, of at least five days, or it may be taken without the state, upon commission, in the manner provided for taking other depositions. The attendance of the party to be examined may be compelled upon subpoena, without payment of witness fees, and such examination shall be subject to the same rules as that of any other witness; but he shall not be compelled to disclose anything not relevant to the controversy. If such examination shall be taken before issue joined, the notice of taking the same shall be accompanied by the affidavit of the district attorney, the attorney-general, or some other party, stating the general nature and object of the action, that discovery is sought to enable the party to plead the points upon which such discovery is desired, and such examination shall be limited to discovery of the facts relevant to the points so stated, unless the court, or the presiding judge thereof, on motion and one day's notice, shall, before the examination is begun, by order further limit the subjects to which such examination shall extend; but such examination shall not

preclude the right to another examination after issue joined upon all the issues in the cause, and the party examining shall in all cases be allowed to examine upon all interrogatories. Such examination shall not be compelled in any other county than that in which the party to be examined resides; *Provided*, That whenever plaintiff or defendant is a nonresident of the state, his deposition may be taken, under the provisions of this section, in the county in which the action is pending, if he can be personally served with notice and subpoena in such county. In any examination under the provisions of this section, the judge or commissioner before whom the same is had, shall have power and authority to compel the party examined to answer all questions relevant to the issues involved, and shall upon the application of the attorney-general compel the production by the party examined of all books, papers and records relevant and pertinent to the issues, and may enforce such orders, and the production of such books, papers and records, by contempt proceedings.

§ 7. If any defendant, or his agent, lawfully required to appear and testify, as provided in this act, either within or without the state, shall neglect or refuse to do so, he may be punished as for contempt, and the pleading of such defendant may, in the discretion of the court, be stricken out, and judgment given against him according to the prayer of the complaint of the state.

§ 8. The word "person" or "persons," wherever used in this act, shall be deemed to include corporations, partnerships, individuals and associations existing under or authorized by the laws of the United States, the laws of any of the territories, the laws of this or any other state, or the laws of any foreign country.

§ 9. This act shall not be construed to affect, or in any manner refer to or interfere with labor unions, or any other associations of laborers organized for the purpose of promoting the welfare of labor, nor shall it interfere with or suppress associations or organizations intended to legitimately promote the interests of trade, commerce or manufacturing in this state.

§ 10. All acts and parts of acts inconsistent with this act are hereby repealed.

§ 11. This act shall take effect and be in force from and after its passage and publication.

Approved April 17, 1893.

LAWS OF 1897, CHAP. 356.

AN ACT to prevent the combinations of fire insurance companies.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows,

§ 1. No fire, fire and marine, or marine and inland insurance company or association, its agent or representatives doing business in this state, shall, either directly or indirectly, enter into any contract, agreement, combination or compact with any other such company or companies or its or their agents or representatives for the purpose of establishing and maintaining a fixed schedule or schedule of rates; *Provided, however,* That in cities and villages it shall be lawful for the local board of underwriters incorporated under the statutes of this state, and in case of the non-existence of such local board therein, then and in that event it shall be lawful for an association of the local agents in such city or village, to, from time to time, establish and maintain rates therein, and for them and such companies represented by them to enter into any lawful contract or agreement to so establish and maintain rates so made; *Provided, however,* That all such schedules of rates shall at all reasonable times be open to the inspection of the assured. It is hereby made the duty of the commissioner of insurance of this state to enforce compliance to the provisions of this section, and it shall be his duty to revoke the license of each and every such insurance company violating the provisions of this section and to report such violation to the attorney-general of the state for prosecution, and each and every such company violating the provisions of this section shall be subject to a penalty of five hundred (\$500) dollars for each and every violation of the same.

§ 2. This act shall take effect and be in force from and after its passage and publication.

Approved April 27, 1897.

LAWS OF 1897, CHAP. 357.

AN ACT to prevent corporations organized under the laws of this state from entering into any combination, conspiracy, trust, agreement or contract, intended to operate in restraint of any lawful trade or commerce carried on in this state.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

§ 1. Corporations organized under the laws of this state are prohibited from entering into any combination, conspiracy, trust, pool, agreement or contract, intended to restrain

or prevent competition in the supply or price of any article or commodity in general use in this state, or constituting a subject of trade or commerce therein, or to control the price of any such article or commodity, to regulate or fix the price thereof, to limit or fix the amount or quantity thereof to be manufactured, mined, produced or sold in this state, or to fix any standard or figure by which its price to the public shall be in any manner controlled or established.

§ 2. Whenever the attorney-general of this state shall be notified, or shall have reason to believe that any corporation organized under the laws of this state has violated any provision of section 1, of this act, it shall be his duty forthwith to address to any such corporation, or to any director or officer thereof, such inquiries as he may deem necessary, for the purpose of determining whether or not such corporation has violated any provision of section 1, of this act, and it shall be the duty of such corporation, director or officer thereof, so addressed, to promptly and fully answer in writing, under oath, such inquiries, and in case such corporation, or director or officer thereof, shall fail or neglect so to do within sixty days from the receipt of such inquiries, unless such time is extended in writing by the attorney-general, it shall be the duty of the attorney-general to proceed against such corporation as hereinafter provided.

§ 3. In case of the forfeiture or neglect of any corporation organized under the laws of this state, or of any director or officer of such corporation, to answer such inquiries as hereinbefore provided, such failure or neglect is hereby declared to be a forfeiture of the charter of such corporation, and it is hereby made the duty of the attorney-general, on leave granted by the supreme court of this state, upon cause shown, to bring an action for the purpose of vacating the charter and annulling the existence of such corporation.

§ 4. No person shall be excused from answering any of the inquiries herein provided for, nor excused from attending and testifying, nor from producing any books, papers, contracts, agreements or documents, in obedience to a subpoena issued by any lawful authority in any case or proceeding, based upon or growing out of any alleged violation of any of the provisions of this chapter, or of any law of this state in regard to trusts, monopolies or illegal combi-

nations, on the ground of or for the reason that the answer, testimony, evidence, documentary or otherwise, required of him, may tend to criminate him, or subject him to a penalty or forfeiture; but no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he may answer, testify or produce evidence, documentary or otherwise, in obedience to any request under this chapter, or any subpoena, or either of them, in any case or proceeding, except that the charter of any corporation may be vacated and its corporate existence annulled, as hereinbefore provided; and except further, that no person testifying in any case or proceeding aforesaid, shall be exempt from prosecution and punishment for perjury committed in so testifying.

§ 5. This act shall take effect and be in force from and after its passage and publication.

Approved April 27, 1897.

COMMON-LAW DECISIONS.

National Distilling Co. v. Cream City Importing Co.

86 Wis., 352.

August, 1893.

Statement.

Defendant bought goods of plaintiff, who brings this suit to recover the price. Defendant pleads that plaintiff is a member of a combination formed to control all the liquors manufactured in the United States, and that the price of the purchased goods was affected by such combination; that, therefore, the contract for the purchase of the goods was void and plaintiff has no cause of action.

Opinion.

Assuming the plea to be true it is no defense, for the contract between plaintiff and defendant was perfectly legal and in no way in restraint of trade. Any contract between plaintiff and a trust combination is only collateral to the contract between plaintiff and defendant and could not affect its validity.

Plaintiff can recover.

Milwaukee Masons and Builders' Association v. Niezerowski.*95 Wis., 129.**January, 1897.***Statement.**

About six-sevenths of the mason contractors of Milwaukee, Wis., belonged to plaintiff association, which passed a private by-law that all bids for work by its members should be first made to the association and that six per cent should be added to the lowest bid and that the lowest bidder should give his note for this six per cent to the association; but if the bids were for repairs and building over, the one who did the original job should be awarded the work and all the others should bid over him to make the builder suppose there was competition. Defendant gave his note for the said six per cent, and it is now sued upon. He pleads illegality of consideration.

Opinion.

The six per cent scheme was in restraint of trade to so great an extent as to make it against public policy and illegal.

No recovery can be had upon the note.

ENGLAND.

COMMON-LAW DECISIONS.

Mitchel v. Reynolds.

1 P. Wms., 181.

1711.

Statement.

Reynolds assigned a lease of a bakery for five years to Mitchel, and agreed not to enter the bakery business in that parish during the said term; and if he did, to pay fifty pounds as damages. Reynolds did enter the business in that parish within five years, and this suit is brought to recover the fifty pounds. Reynolds claims the contract was void, it being in restraint of trade.

Opinion.

If a promise in restraint of trade is founded upon a good consideration, partial as to territory, and reasonable, it will be enforced, but not so if it is general, not to exercise a trade throughout the Kingdom, because it could be no benefit to either party.

Plaintiff can recover damages.

Mogul Steamship Co. v. McGregor, Gow & Co.

1892, Appeal Cases, 25.

Statement.

The defendants are firms and companies operating steam vessels, during the whole year, some on the Great River of China between Hankow and Shanghai and others between Shanghai and European ports. The plaintiffs send vessels to Hankow during the tea season to share the tea-carrying trade. Defendants combined to prevent plaintiffs and other outsiders from obtaining a share of the trade. The means used were the sending of ships to compete with plaintiffs' ships; the lowering of freights; a rebate to those who dealt exclusively with them; the indemnifying other vessels that would compete with the plaintiffs; and the dismissal of agents who were acting for both plaintiffs and defendants.

Plaintiffs bring this suit to recover the damages they have sustained by reason of this combination.

Opinion.

Lord Halsbury delivered the principal opinion, and in it said:

“I am of opinion * * * that the whole matter comes around to the original proposition, whether a combination to trade, and to offer, in respect of prices discounts and other trade facilities, such terms as will win so large an amount of custom as to render it unprofitable for rival customers to pursue the same trade is unlawful, and I am clearly of opinion that it is not.”

No action lies.

CANADA.

COMMON-LAW DECISION.

The Ontario Salt Co. v. The Merchants' Salt Co.

18 Grant's Ch. (Upper Canada), 540.

1871.

Statement.

Several incorporated companies and individuals, engaged in the manufacture and sale of salt, entered into an agreement, whereby the several parties combined under the name of the "Canadian Salt Association" for the purpose of carrying on the salt business. It was agreed that all salt manufactured by them should be sold through the trustees of the association, and that no salt should be sold otherwise.

Opinion.

The court held that this agreement was not void as contrary to public policy; that it was not *ultra vires* of the incorporated companies, and that it would be enforced by an equity court.

ADDENDUM.

ILLINOIS.

ANTITRUST LAW HELD VOID.

Union Sewer Pipe Company v. Connelly.

U. S. CIRCUIT COURT,
NORTHERN DISTRICT OF ILLINOIS,
January 29, 1900.

Statement.

Plaintiff brings suit on promissory notes given by defendant for balance due on purchases of sewer pipe. Defendant gives notices of three special defenses, all based upon the theory that plaintiff was a combination in restriction of trade, contrary—(1) to the common law; (2) to the so-called Sherman Act; (3) to the statute of Illinois taking effect July 1, 1893.

Opinion.

As to the first special defense: "The fact that one party to a contract is engaged in illegal acts will not, at common law, avail the other party as a defense to the enforcement of a contract in itself legal."

As to the second special defense: The so-called Sherman Act does not affect contracts which "merely indirectly, remotely, incidentally, or collaterally regulate to a greater or lesser degree interstate commerce among the States."

As to the third special defense: The statute of July 1, 1893, provides, in section 9, that "the provisions of this act shall not apply to agricultural products or live stock while in the hands of the producer or raiser."

The statute, by virtue of this clause, contains both class and special legislation, and is in contravention of the fourteenth amendment of the Federal Constitution, which forbids any State to deprive any person of the equal protection of the laws, and also in contravention of section 22 of article 4 of the constitution of Illinois, which says: "In all other cases where a general law can be made applicable no special law shall be enacted."

It is suggested that the said ninth section may be declared void without affecting the validity of the remaining clauses of the act. By such a decision the courts would make the act binding upon those classes of persons which the legislature especially exempted from its provisions. This would be judicial legislation of the most flagrant character. Clause 9 taints the whole act and renders it all void.

Verdict must be given for the plaintiff.

TABULAR DIGEST OF THE STATUTES OF THE UNITED STATES AGAINST TRU

STATE.	THE EVIL.				PROCEDURE.							
	Date and citation.	Things forbidden.	Exceptions.	Grade of crime.	Grand jury.	Prosecuting attorney.	Secretary of state.	Courts.	Witnesses.	Affidavits.	Proof.	Inju
UNITED STATES	1887, 1890, 1894; 24 Stat. at Large, 379; 26 Stat. at Large, 209; 28 Stat. at Large, 570.	Every combination in restraint of trade in the District of Columbia; in the Territories; among the several States, or with foreign countries.		Misdemeanor		Each district attorney, in his district, under direction of the Attorney-General, must institute proceedings in equity to restrain violations of this law.		The circuit courts of the United States have jurisdiction.				Circuit enjoin this law
ALABAMA	1883, Criminal Code, § 4145. Laws of 1896-97, No. 634.	Railroad combinations to control freight business and rates. Combinations of insurance companies to raise rates.	Where the combination is approved by railroad commissioners.									
ARKANSAS	Laws of 1897, Act 46, and Laws of 1899, Act 41.	All combinations which tend to lessen free competition in importation, production, or sale of goods; or to regulate or fix the prices, or to fix premiums on insurance.		Conspiracy	It must be specially instructed as to the provisions of this law by the judges.	The attorney-general and prosecuting attorney of each county to enforce this law. They receive one-fourth the penalty, and in suits to forfeit franchise, \$25 to \$250, in the discretion of the court.	He must each year demand affidavits of an officer of each corporation that it is not connected with an illegal combination. Failure to comply to be reported to prosecuting attorney.	Actions may be brought in any court of competent jurisdiction.		President, secretary, treasurer, or director must each year make affidavit that his corporation is not connected with an illegal combination. For failure, prosecution to be instituted against corporation.	Foreign corporation's agent having violated law is prima facie proof of corporation's guilt.	
COLORADO	1876, Constitution, Art. 15, § 5.	Consolidating competing railroads										
CONNECTICUT	1818, Constitution, Art. 1, § 1.	None entitled to exclusive public emoluments.										
GEORGIA	Laws of 1896, page 68.	Essentially the same as in Arkansas, except that insurance is not expressly mentioned.	This law does not apply to live stock and agricultural products in the hands of the raiser or producer.	Conspiracy against trade.	Must be charged by judges as to this law.	The attorney-general must enforce the act by due process of law.		Any court of competent jurisdiction.				
IDAHO	1889, Constitution, Art. 11, § 18.	Combining companies to limit prices.										
ILLINOIS	Laws of 1891, page 206; Laws of 1893, pages 89 and 182; Laws of 1897, page 298.	Any trust, pool, combine, confederation, agreement or understanding for regulating or fixing the prices of goods or to fix or limit the quantity to be made or sold; also owning or issuing trust certificates.	In production of articles of merchandise, the cost of which is mainly made up of wages, combinations shall be lawful when the chief object and effect is to maintain or increase wages. Live stock and agricultural products in hands of raiser or producer	Misdemeanor	Indictment need state only purposes of trust and that defendant was a member.	The prosecuting attorneys shall enforce this law in their respective jurisdictions. On notice from the secretary of state that a corporation neglects required affidavit, they may at once proceed to forfeit charter and collect fines.	On the 1st of each September, and at any other time, on reasonable evidence that a corporation has entered a trust, he must require of its president, secretary, treasurer, or any director, under oath, a statement as to whether it is connected with a trust.		No corporation, firm, or individual shall be subject to criminal prosecution by reason of anything truthfully disclosed by the affidavit required by this law, or in any testimony elicited in the execution thereof.	Each year the officers of each corporation in the State must furnish an affidavit as to whether it is connected with a trust, and for failure to do so its charter may be taken away and \$50 forfeited for each day's neglect.	A preponderance of evidence shall convict. All members of trust need not be shown.	
INDIANA	Laws of 1897, Chapter 104.	Essentially the same as Arkansas, except insurance is not expressly mentioned.	The law does not apply to agricultural products nor live stock while in the possession of the producer or raiser.	Conspiracy against trade.	Must be charged by judges as to this law.	The attorney-general shall enforce the act by due process of law.		Any court of competent jurisdiction.				
	Laws of 1899, Chapter 148.	Combinations to prevent dealers and manufacturers from selling supplies to dealers, mechanics, and artisans.		Conspiracy against trade.		The prosecuting attorney of any county where the offense is committed must bring action against offender.		Any court of competent jurisdiction.				
IOWA	1890, Code, §§ 5060-5067.	Any trust, pool, combine, confederation, agreement or understanding for regulating or fixing the prices on goods or to fix or limit the quantity to be made or sold; also owning or issuing trust certificates.		Conspiracy to defraud.	They shall inquire whether there is a trust in their respective counties.	County attorneys, in their counties, and the attorney-general shall enforce the law, and receive an extra fee of one-fifth of the fine if they act separately and one-fourth if together.	Having reason to believe that a corporation is connected with a trust, he must notify it to withdraw and that unless it does so its charter will be forfeited.					
KANSAS	Laws of 1897, Chapter 175, and laws of 1889, Chapter 257.	Creating or maintaining a confederation to regulate the price or quantity of goods, fees of attorneys and doctors, or rate of interest. Owning or issuing trust certificates.		Misdemeanor	Must be specially instructed as to the provisions of this law by the judges.	Each county attorney, in his county, must enforce this law. If he fails to do so, the attorney-general must, and the county attorney is guilty of a misdemeanor, fined \$100 to \$500, imprisoned ten to ninety days, and forfeits his office. Executive officers of county, city, or town must inform county attorney of violation of the act upon pain of forfeiture of office and fine of \$100 to \$500.		Any court of competent jurisdiction.	All members of a trust may be compelled to testify and produce books, but the testimony can not be used against them in a criminal action.			

OF THE UNITED STATES AGAINST TRUSTS AND INDUSTRIAL COMBINATIONS

					PENALTIES.									STATE.
Witnesses.	Affidavits.	Proof.	Injunction.	Disposition of fines.	Imprisonment.	Individual fines.	Firm and corporation fines.	Contracts unenforceable.	Debts uncollectible.	Damages.	Forfeiture of franchise.	Forfeiture of goods.	Foreign corporations.	
			Circuit courts may enjoin violations of this law.		Not exceeding one year, and, if the crime concerns imports, not less than three months.	Not exceeding \$5,000 fine, or imprisonment, or both.	Not exceeding \$5,000.			Any person damaged by a violation of this law may recover treble damages, costs of suit, and a reasonable attorney's fee.		Property which is the subject-matter of the conspiracy, in transportation from one State to another, or to a foreign country, shall be forfeited to the United States.		UNITED STATES.
						\$50 to \$200	\$50 to \$200							ALABAMA.
	President, secretary, treasurer, or director must each year make affidavit that his corporation is not connected with an illegal combination. For failure, prosecution to be instituted against corporation.	Foreign corporation's agent having violated law is prima facie proof of corporation's guilt.		One-fourth goes to the prosecuting attorneys and the rest to the school fund of the county where the offense is committed.	One to ten years in penitentiary, with or without a fine of \$500 to \$2,000.	Any person who shall engage in the conspiracy, \$200 to \$5,000.	Company must pay 25 per cent more on a policy than it otherwise would have to. \$200 to \$5,000. Each day is a separate offense.			On the occurrence of a loss the companies must pay 125 per cent of it.			A foreign corporation having violated this law is prohibited from doing business in the State.	ARKANSAS.
										Any person injured may recover of those operating the trust the full price paid for the goods he bought affected by the trust.	The franchise of a corporation is forfeited for violation of this law.			COLORADO.
														CONNECTICUT.
					One to ten years in penitentiary.	\$100 to \$5,000 fine, or imprisonment, or both.				Person injured may recover price paid for goods.	Guilty corporation forfeits franchise.		Guilty foreign corporation excluded from State.	GEORGIA.
ration, firm, or individual shall be subject to criminal prosecution on of anything illegally disclosed by affidavit required by, or in any testimony in the execution hereof.	Each year the officers of each corporation in the State must furnish an affidavit as to whether it is connected with a trust, and for failure to do so its charter may be taken away and \$50 forfeited for each day's neglect.	A preponderance of evidence shall convict. All members of trust need not be shown.		The informer gets one-fifth of the fine and the remainder goes to the county where the case is tried.	Not exceeding one year in county jail.	Member of a firm or officer of a corporation who violates the law. \$300 to \$1,000 fine, or imprisonment, or both. Laws of 1893, page 182, \$2,000-\$5,000.	First offense, \$500 to \$2,000; second offense, \$2,000 to \$5,000; third offense, \$5,000 to \$10,000; subsequent offenses, \$15,000. Laws of 1893, page 182, \$2,000-\$5,000.	Contracts made in violation of the act are void.	A buyer of goods from a trust is not liable for their price.		When a corporation neglects to furnish required affidavit, proceedings may be instituted to forfeit its charter.		On failure to furnish affidavit when requested to do so by the secretary of state, the attorney-general may institute proceedings to prohibit a foreign corporation from doing business within the State.	ILLINOIS.
					One to ten years in penitentiary.	\$100 to \$5,000 fine, or imprisonment, or both.	\$100 to \$5,000	Contracts in violation of the act are void.		One damaged can recover the price paid for the goods.	Guilty corporation forfeits franchise.		Guilty foreign corporation excluded from State.	INDIANA.
					No more than one year in county jail.	Anyone taking part in combination, \$50 to \$2,000, and besides may be imprisoned.	\$50 to \$2,000	Agreements to combine are void.		One injured by illegal combination may recover damages, costs, and attorney's fee.		After a member is notified to leave an illegal combination he shall forfeit each day he remains connected with it \$50.		
				One-fifth to one-fourth goes to the prosecuting attorneys.	Not exceeding one year in county jail.	\$500 to \$5,000 fine, or imprisonment, or both.	1 to 20 per cent of its capital.	Contracts made in violation of the act are void.	Members of a trust can not collect pay for goods sold.		If a company does not withdraw from trust on thirty days' notice it forfeits its franchise.			IOWA.
Members of a trust may be compelled to testify and produce books, but testimony can not be taken against them in a criminal action.					Thirty days to six months.	\$100 to \$1,000 fine, or imprisonment, or both.	\$100 to \$1,000		Defendant may plead in bar that plaintiff is a member of a trust.	One damaged may recover the price paid for the goods or full amount of money borrowed.				KANSAS.

TABULAR DIGEST OF THE STATUTES OF THE UNITED STATES AGAINST TRUSTS

STATE.	THE EVIL.				PROCEDURE.							
	Date and citation.	Things forbidden.	Exceptions.	Grade of crime.	Grand jury.	Prosecuting attorney.	Secretary of state.	Courts.	Witnesses.	Affidavits.	Proof.	In
KANSAS—Continued..	Laws of 1897, Chapter 265.	Creating or maintaining a combine (1) to regulate or fix prices on goods, or to fix or limit the quantity to be made or sold, or (2) to fix or limit the premium for fire insurance, or (3) to deal in goods owned by a company prohibited from doing business in the State.		Misdemeanor		Each county attorney, in his county, and the attorney-general, to prosecute all persons violating this law, and all State and county officials having notice of offenses shall notify the prosecuting attorneys and furnish names of witnesses. Any officer failing to perform above acts shall forfeit his office and be fined \$100 to \$1,000.		Circuit courts have jurisdiction.	The circuit courts may, upon good cause, subpoena witnesses named by the county attorney and examine them concerning violations of this act, and such witnesses must answer all questions, but the evidence shall not be used against them in a criminal action.			
	Laws of 1899, Chapter 293.	Combinations with persons within or without the State; (1) to defraud a shipper of seeds, grain, hay, or live stock out of part of the net weight; (2) to prevent one from selling such articles without the agency of a third person; (3) and to prevent grain being shipped unless controlled by a warehouseman.		Misdemeanor		The attorney-general must enforce this act		District and supreme courts have jurisdiction to enjoin violation of the act.				
KENTUCKY	1890, Kentucky Statutes, Chapter 101.	Essentially the same as (1) in Louisiana.		Conspiracy	Specially instructed as to this law by judges.							
LOUISIANA.	Laws of 1890, Act 86; Laws of 1892, Act 90, and Laws of 1894, Act 176.	(1) Combining to regulate or fix the price or quantity of goods to be sold. Owning or issuing trust certificates. (2) Issuing rebate certificates is merely declared unlawful.)	Agricultural products and live stock in the hands of the producer or raiser and combinations of laborers to increase wages or redress grievances.	Misdemeanor	An indictment need state only the purposes of the trust and that defendant was a member.	He must of his own motion enforce forfeitures of franchises and enjoin convicted foreign corporations.					In an action all members of trust need not be shown.	Conviction joins business
MAINE	Laws of 1889, Chapter 266.	Combinations of firms or corporations organized to produce articles entering into general use.	The law does not operate upon those that withdraw from trusts within ninety days from passage of the act.	Misdemeanor		On neglect of corporation to give required affidavit he must bring suit to forfeit its charter.	He must send each corporation a copy of this act and demand an affidavit as to whether it is connected with a trust.	The supreme court may decree dissolution of a corporation.		As soon as the act passed affidavits were required as to whether corporations were connected with trust. For neglect to give them their charters might be forfeited.		
MICHIGAN.	Laws of 1889, Act 225.	Essentially the same as Kansas, Act of 1897, minus 2 and 3. Making contract to combine is one crime and acting under it is another.	Agricultural products and live stock in the hands of the producer or raiser and organizations of laborers for the benefit of their members. The law shall not affect contracts for the good will of a business.	Misdemeanor		Believing he can establish a case against a corporation, the attorney-general must institute proceedings in the nature of quo warranto.	He shall publish the act in daily papers for four successive weeks after its passage.					
	Laws of 1899, Act 49.	Combinations (1) to fix the price of transportation or any article of merchandise; (2) to limit or reduce the production of any commodity; (3) to own or issue trust certificates; or (4) to combine to put business in the control of trustees with intent to restrain trade.		Conspiracy against trade, and misdemeanor.	An indictment need not state the name nor the description of the combination, but only its effects and that accused was a member.	It is the duty of the attorney-general or proper county attorney to institute quo warranto proceedings against a corporation violating the act.	If a foreign corporation violates this act, the secretary of state may revoke its certificate to do business in the State.	Circuit and supreme courts have jurisdiction.				
MINNESOTA	Laws of 1891, Chapter 99; Laws of 1899, Chapter 359.	All combinations which tend to lessen free competition in importation, production, or sale of goods.		Felony		Attorney-general must enforce the act.		Any of competent jurisdiction.	All must testify, but the testimony can not be used against the witnesses.			
MISSISSIPPI.	1890, Annotated Code, Chapter 140.	Combinations (1) to limit, increase, or reduce the price or production of a commodity; (2) to own or issue trust certificates; (3) to place the control of business in the power of trustees; (4) to prevent bids for public works.	The act does not apply to agricultural products in the hands of the producer, nor to societies of artisans, employees, and laborers formed to benefit their members.	Criminal conspiracy.								
MISSOURI.	Laws of 1891, page 186, amended by Laws of 1895, page 237, amended by Laws of 1897, page 208, and Laws of 1899, page 314; Laws of 1899, pages 129, 316, 318, and 320.	Creating or maintaining a trust, pool, combine, agreement, confederation, or understanding (1) to regulate or fix prices on goods, or to fix or limit the quantity to be made or sold, or (2) to fix or limit the premium for fire insurance; (3) to own or issue trust certificates; (4) to deal in goods owned by a company prohibited from doing business in the State.	It does not apply to insurance combinations in cities of 100,000 inhabitants.	Called a conspiracy to defraud; to deal in goods of a company barred from the State is a felony.		On neglect to furnish required affidavit he must proceed to forfeit charter and collect fines. Where a charter is forfeited he receives \$25 to \$500 from the corporation. He may at any time require affidavits in the same manner as the secretary of state if he has reasonable proof of violations of this act. He receives one-fourth of the penalties.	He must, about the first of each July, send to the president, secretary, or treasurer of every corporation in the State an inquiry as to whether it is connected with a trust, and demand answer under oath. Neglect to answer must be certified to prosecuting attorney. All county officers must furnish him information when he requires it.	Any court of competent jurisdiction. The clerk must notify the secretary of state when a foreign corporation is adjudged guilty.	All persons may be compelled to disclose any information they may possess concerning violations of this law either before or after suit is commenced, but no person's evidence shall be used against him in a criminal prosecution; neither shall any prosecution be commenced against him on account of his evidence.	On request of the secretary of state each corporation must furnish an affidavit as to whether it is connected with a trust; for neglect to do so its charter may be forfeited. It shall not be held criminally liable for anything truly stated in such affidavit.	That an agent of a foreign corporation violated the law is prima facie proof against the corporation.	

E UNITED STATES AGAINST TRUSTS AND INDUSTRIAL COMBINATIONS—Continued.

					PENALTIES.										STATE.
Witnesses.	Affidavits.	Proof.	Injunction.	Disposition of fines.	Imprisonment.	Individual fines.	Firm and corpora- tion fines.	Contracts un- enforceable.	Debts uncol- lectible.	Damages.	Forfeiture of fran- chise.	Forfeiture of goods.	Foreign corpora- tions.		
it courts may, upon use, subpoena wit- named by the attorney and ex- them concerning ons of this act, and itnesses must an- l questions, but the ce shall not be used them in a criminal					Thirty days to six months.	\$100 to \$1,000, and forfeits \$100 for each day the vio- lation continues. Fine and imprisonment.	\$100 to \$1,000, and for- feits \$100 for each day the violation continues.	All contracts in violation of this act are void.		All damages sustained and attorney's fee may be re- covered from any person connected with the trust.	Guilty domestic cor- poration forfeits franchise.		Guilty foreign corpora- tion excluded from State.	KANSAS—Continued.	
					(3) Ninety days to one year in county jail.	(1) \$100 to \$1,000; (2) \$1,000 to \$5,000; (3) \$1,000 to \$5,000, with or without im- prisonment for each of- fense.	(1) \$100 to \$1,000; (2) \$1,000 to \$5,000; (3) \$1,000 to \$5,000 for each offense.			One injured may recover threefold damages, costs, and a reasonable attor- ney's fee.					
		In an action all mem- bers of trust need not be shown.	Convicted foreign cor- porations may be en- joined from doing business in the State.		Six months to one year in county jail.	\$500 to \$5,000 fine, or impris- onment, or both.	\$500 to \$5,000	Contracts made in violation of the act are void.	Trust can not col- lect price for goods sold.		Guilty domestic cor- poration forfeits franchise.			KENTUCKY.	
					Six to twelve months in the penitentiary.	\$100 to \$1,000 fine, or impris- onment, or both.	\$100 to \$1,000	Contracts con- trary to this law are void.			Guilty domestic cor- poration forfeits franchise.		Guilty foreign corpora- tion excluded from State, and it may be kept out by injunc- tion.	LOUISIANA.	
	As soon as the act passed affidavits were required as to whether corpora- tions were connected with trust. For neglect to give them their charters might be forfeited.						\$5,000 to \$10,000.	Instruments grow- ing out of trust are void.			For neglect to furnish required affidavit a franchise might be forfeited.			MAINE.	
					Agreeing to combine, not exceeding six months in county jail. Acting under contract, not exceed- ing one year in prison or six months in jail.	Making contract to com- bine, \$50 to \$300. Acting under contract, \$100 to \$500. Fine or impris- onment, or both.	Making contract, \$50 to \$300. Acting un- der contract, \$100 to \$500.	Contracts viola- ting law, made in State or out, void.			Guilty domestic cor- poration forfeits franchise, but it is given thirty days after the passage of the act to withdraw from trust.			MICHIGAN.	
					Six months to one year. Each day's violation is a sepa- rate offense.	\$50 to \$5,000. Violation of (3) and (4), \$50 to \$1,000. The provisions of the act are cumulative of each other.	\$50 to \$5,000. Viola- tion of (3) and (4), \$50 to \$1,000.	All contracts in violation of act are void.		One injured may recover twofold damages and costs.		After a prosecuting attorney notifies the offender he forfeits \$50 each day he re- mains connected with the combina- tion.	A foreign corporation doing business in this State forfeits the right by viola- ting the statute.		
estify, but the tes- can not be used the witnesses.					Three to five years.	\$500 to \$5,000, or imprison- ment.	\$500 to \$5,000	Trust can not en- force contracts.			Guilty corporation forfeits its charter.		Guilty foreign corpora- tion prohibited from doing business in the State.	MINNESOTA.	
						\$25 to \$1,000	\$25 to \$1,000	Contracts to com- bine or to fur- ther the object of the combina- tion are void.	When (4) has been violated, money due can not be collected.	Double the amount paid for any article may be recov- ered from any member of the combination, and all consequential damages.	Every corporation violating this act shall forfeit its char- ter.		A foreign corporation violating this law shall be prohibited from doing business in the State.	MISSISSIPPI.	
ons may be com- to disclose any in- on they may pos- sioning violations law either before r suit is com- , but no person's e shall be used him in a criminal tion; neither shall osecution be com- against him on of his evidence.	On request of the secretary of state each corporation must furnish an affidavit as to whether it is con- nected with a trust; for neglect to do so its charter may be forfeited. It shall not be held criminally lia- ble for anything truly stated in such affidavit.	That an agent of a for- eign corporation violated the law is prima facie proof against the corpora- tion.		One-fourth goes to the prosecuting attor- ney and the remain- der to the school fund.	For dealing in goods of a corporation prohibited from do- ing business in the State, not exceed- ing three years in penitentiary or one year in county jail.	For each day, \$5 to \$100. For dealing in goods of a corporation prohibited from doing business in the State, \$100 to \$1,000. Fine or imprisonment, or both.	For each day, \$5 to \$100. For dealing in goods of a corpora- tion prohibited from doing business in the State, \$100 to \$1,000.	Contracts made in violation of this law are void.	Purchaser of any article from a violate of this law is not liable for its price.	One damaged by the viola- tion of this law may re- cover threefold damages, costs, and a reasonable attorney's fees.	A domestic corpora- tion forfeits its franchise for viola- tion of this law.		A foreign corporation having violated this law is prohibited from doing business in the State.	MISSOURI.	

TABULAR DIGEST OF THE STATUTES OF THE UNITED STATES AGAINST TRUSTS

STATE.	THE EVIL.				PROCEDURE.							
	Date and citation.	Things forbidden.	Exceptions.	Grade of crime.	Grand jury.	Prosecuting attorney.	Secretary of state.	Courts.	Witnesses.	Affidavits.	Proof.	Ir
MONTANA	1895, Penal Code, § 321.	All combinations which tend to lessen free competition in importation, production, or sale of goods.	Combinations of laborers or farmers.									
NEBRASKA	Laws of 1897, Chapter 79.	Confederation to regulate prices on goods, or to fix the quantity to be made or sold, or to fix or limit the premium for insurance.	Combinations of laborers to increase wages.	Misdemeanor	Indictment need state only purposes of trust and that defendant was a member.	He institutes suit to take away the charter of corporations, and enjoin foreign corporations. He receives \$100 to \$500 for each charter forfeited, to be taxed against the company.			All must testify, but the testimony can not be used against the witnesses.		In an action all members of trust need not be shown.	Guilty ratio joined bus State
	Laws of 1897, Chapter 80.	Combinations to prevent competition among grain dealers.		Felony								
	Laws of 1897, Chapter 81.	Creating or maintaining a trust, pool, combine, or confederation to fix or limit the premium for fire insurance, or to control agents' commissions.		Misdemeanor					Members of company may be called by auditor and questioned under oath. If they fail to come, he may revoke its right to do business for one year. Also like first Nebraska act.			
NEW MEXICO	1891, Compiled Laws, §§ 1292-1294.	(1) Any combination to control the price or quantity of a product of the soil, mine, or factory. (2) Any attempt to monopolize the trade or commerce of the Territory.		Misdemeanor								
NEW YORK	1881, Penal Code, § 163; Laws of 1897, Chapter 384, § 7; Laws of 1899, Chapter 690.	Combinations creating a monopoly in the production or sale of any commodity of common use, or restraining competition in the supply or price.		Misdemeanor		The attorney-general may bring suit to enjoin violation of this law. He may get an order from the court and call witnesses before a referee and have their testimony taken before commencing a suit.			Witnesses may be called by attorney-general before commencement of an action, and they must testify to all they know, but can not be prosecuted for any act concerning which they testify.			Violati may the 1 attor
NORTH CAROLINA	Laws of 1889, Chapter 374.	Same as in South Carolina; and selling goods less than cost to break down competition.	Combinations of consumers to protect themselves against imposition in the cost of articles for their own use.	Misdemeanor								
	Laws of 1899, Chapter 666.	To own or issue trust certificates; a combination to fix or regulate prices, or to fix or limit the quantity to be produced of any article.	The act does not apply to present investments of charitable institutions, to agricultural products in the hands of the producer, to the lumber interests of the State, to cotton and woolen mills, to fishing, trucking, and canning industry, nor to merchants in the State not interested in a trust.	Conspiracy to defraud.	An indictment need not give name of trust, or how or where it was created; but it is sufficient if it state the purposes and effects and that accused was a member.	When a charter shall be declared forfeited by a court, it shall allow the prosecuting attorney from \$100 to \$500, but if the case be appealed to the supreme court the attorney-general shall receive one-half. It shall be paid from the assets of the corporation.	The secretary of state shall be notified by the clerk of the county where a corporation has violated the act, and shall be governed thereby as to the corporate papers.	Any court of competent jurisdiction.		A preponderance of evidence shall be sufficient to convict.		
NORTH DAKOTA	Laws of 1897, Chapter 141, and Revised Codes, Chapter 51.	Essentially the same as in South Carolina.		Conspiracy against trade.	Must be charged by judges as to this law.	The attorney-general must enforce this law		Any court of competent jurisdiction.				
OHIO	Laws of 1898, page 143.	To own or issue trust certificates; a combination to fix or regulate prices, or to fix or limit the quantity to be produced of any article.		Conspiracy against trade.	Same as in North Carolina, Law of 1899.	If a corporation violates the act, the attorney-general or the prosecuting attorney of the proper county must bring suit to take away charter. The attorney-general may enjoin foreign corporate violators from doing business in the State.	He may revoke foreign corporation's certificate to do business in the State when such corporation has violated the act.	Suit may be brought in the circuit or supreme court.		Character of combination may be established by proof of its reputation.	Foreign may from in the	
OKLAHOMA	1890, Statutes of Oklahoma, Chapter 83.	Essentially the same as in South Carolina.		Misdemeanor		The prosecuting attorney, in his county, must enforce the act, and receives one-fifth the fines.			All must testify, but the evidence can not be used against them in a criminal trial.			
SOUTH CAROLINA	Laws of 1897, No. 265; Laws of 1899, Chapter 89.	All combinations which tend (1) to lessen free competition in importation, production, or sale of goods, or to regulate or fix prices; or (2) to fix premiums on insurance.	It does not apply to officers performing official duty under the laws of the State.	Conspiracy against trade.		Upon complaint by affidavit attorney-general must proceed to forfeit the charter of a guilty corporation; (2) attorney-general must enforce it.	(2) The officers to whom insurance companies report must revoke the license of a corporation to do business in the State, and for three years it shall not be renewed.		All must testify, but they shall not be punished for acts concerning which they testify.	(2) Affidavits are required each year from officers of companies as to whether they are connected with a combination.		
SOUTH DAKOTA	Laws of 1890, Chapter 154, amended by Laws of 1893, Chapter 171.	Essentially the same as in South Carolina, plus combinations to increase interest.		Felony		Each State's attorney, in his county, on reasonable ground must prosecute for violation of this law, and at the request of a citizen in his county apply for an injunction.	On application for corporate charter he must require two applicants to swear that several corporations are not trying to evade the law by it.	Judge of circuit or supreme court may enjoin violations.				Violati may
	Laws of 1897, Chapter 94.	Essentially the same as in South Carolina.	Combinations of laborers to increase wages.	Misdemeanor		He must, upon the affidavit of a person aggrieved, prosecute a violator of this act.						

UNITED STATES AGAINST TRUSTS AND INDUSTRIAL COMBINATIONS—Continued.

					PENALTIES.										STATE.
Witnesses.	Affidavits.	Proof.	Injunction.	Disposition of fines.	Imprisonment.	Individual fines.	Firm and corpora- tion fines.	Contracts unen- forceable.	Debts uncol- lectible.	Damages.	Forfeiture of fran- chise.	Forfeiture of goods.	Foreign corpora- tions.		
testify, but the tes- can not be used the witnesses.		In an action all mem- bers of trust need not be shown.	Guilty foreign corpo- rations may be en- joined from doing business in the State.		Not exceeding five years in State prison.	Not exceeding \$10,000 fine, or imprisonment, or both.	Not exceeding \$10,000.				Guilty corporation forfeits its fran- chise.	Property of corpora- tion goes to the State on conviction.	Guilty foreign corpo- ration excluded from State.	MONTANA.	
					\$25 to \$5,000	\$25 to \$5,000	Contracts con- trary to this law are void.	Purchaser not lia- ble to violator for price.	All damages, costs of suit, and reasonable attorney's fee may be recovered.	A domestic corpora- tion forfeits its franchise for viola- tion of this law.			A guilty foreign cor- poration is excluded from the State.	NEBRASKA.	
of company may l by auditor and ed under oath. If to come, he may s right to do busi- one year. Also Nebraska act.				One-half goes to per- son furnishing evi- dence. Goes to school fund	Not exceeding six months in peniten- tiary.	\$1,000 to \$2,000 fine, or im- prisonment, or both.	\$1,000 to \$2,000			Of any member may be re- covered all damages and a reasonable attorney's fee.					
					Each offense \$100 to \$500	Each offense, \$100 to \$500.			Its right to do busi- ness may be revoked for one year.						
may be called by -general before ement of an ac- they must tes- l they know, but e prosecuted for oncerning which ify.			Violation of this law may be enjoined at the request of the attorney-general.		(1) Not exceeding one year or until the fine imposed is paid; (2) not exceeding one year.	(1) \$100 to \$1,000 and impris- onment; (2) not over \$1,000 fine, imprisonment, or both.	(1) \$100 to \$1,000. (2) Not over \$1,000.	Contracts in viola- tion of the act are void.	One violating the act can not re- cover for goods sold.					NEW MEXICO.	
					Not exceeding one year.	Not exceeding \$5,000 fine, or imprisonment, or both.	Not exceeding \$5,000	All contracts in violation of the act are illegal and void.			The attorney-general may enjoin a foreign corporation from doing acts within the State contrary to this law.	NEW YORK.			
					Each offense, not ex- ceeding ten years.	Not exceeding \$10,000 fine, or imprisonment, or both, for each offense.	Not exceeding \$10,000 each offense.							NORTH CAROLINA.	
						\$100 for each day shall be forfeited to the State.	\$100 for each day shall be forfeited to the State.	Any contract in violation of the act is void.			For any violation of the act a domestic corporation forfeits its charter.				
		A preponderance of evidence shall be sufficient to convict.		They go to the State											
					One to ten years in penitentiary.	\$100 to \$5,000 fine, or impris- onment, or both.	\$100 to \$5,000	Contracts to com- bine are void.		One damaged may recover price paid for goods con- trolled by the trust.	Guilty domestic cor- poration forfeits franchise.		Guilty foreign corpo- ration excluded from State.	NORTH DAKOTA.	
					Six months to one year. Fine, imprisonment, or both.	\$50 to \$5,000. Where the means used is a trust in its proper sense, \$50 to \$1,000. The penalties are cumu- lative.	\$50 to \$5,000. When the means used is a trust in its proper sense, \$50 to \$1,000. The penalties are cumulative.	Any contract in violation of the law is void.	Injured party may recover double damages and cost.	For violation of the act a domestic cor- poration forfeits its franchise.	After due notice from the attorney-general or prosecuting attor- ney, \$50 is forfeited for each day's con- tinuance of the vio- lation.	A foreign corporation violating the act may be enjoined from do- ing business in the State.	OHIO.		
testify, but the can not be used hem in a crim-	(2) Affidavits are required each year from officers of companies as to whether they are connected with a combination.					\$50 to \$500	\$50 to \$500. Officers for second offense pay double first fine.		One violating this law can not re- cover for goods sold.	One injured may recover damages, costs, and attor- ney's fee.	The franchise of a cor- poration is forfeited for violation of this law.			OKLAHOMA.	
testify, but they be punished for ncerning which ify.												One damaged may recover price paid for goods con- trolled by the trust.	Guilty domestic cor- poration forfeits franchise.	No court shall recog- nize the corporate existence of a for- eign corporation ad- judged guilty.	SOUTH CAROLINA.
			Violations of this law may be enjoined.			If agent of guilty non- resident dealer, not exceeding five years; otherwise not ex- ceeding three years.	Not exceeding \$1,000 fine, or imprisonment, or both.	Not exceeding \$1,000		One may recover all dam- ages. A nonconsenting stockholder may recover price of stock.			An agent selling goods in the State for non- resident wholesale dealer, who refuses to sell to dealers in the State at whole- sale price, is deemed guilty; and like Ohio.	SOUTH DAKOTA.	
				One-half to persons aggrieved; one-half to the county.		First offense, \$1,000 to \$5,000; second offense, \$5,000 to \$10,000.	First offense, \$1,000 to \$5,000; second offense, \$5,000 to \$10,000.								

TABULAR DIGEST OF THE STATUTES OF THE UNITED STATES AGAINST TRUSTS A

STATE.	THE EVIL.				PROCEDURE.							
	Date and citation.	Things forbidden.	Exceptions.	Grade of crime.	Grand jury.	Prosecuting attorney.	Secretary of state.	Courts.	Witnesses.	Affidavits.	Proof.	Injun
TENNESSEE	Laws of 1891, Chapter 218; Laws of 1897, Chapters 93 and 94.	All combinations that tend to prevent free competition in the production, importation, or sale of goods, or to fix or regulate the price.	It does not apply to agricultural products or live stock while in the possession of the producer or raiser.	Concerning coal, misdemeanor; otherwise felony.	They must be instructed by the judges in special reference to this law.	The attorney-general must enforce this law.		Action to forfeit charter should be in the circuit court.	Persons connected with a trust can be compelled to testify and produce books and papers, but such evidence can not be used against the witnesses.			
TEXAS	Laws of 1895, Chapter 83. Laws of 1899, Chapter 146.	Like Tennessee, plus combinations to control transportation, and to prevent competition by aids to commerce.	Same as in Tennessee, plus labor organizations and sale of good will of a business.	Conspiracy to defraud.	Indictment need state only purposes of trust and that defendant was a member.	He must prosecute to take away charters and recover forfeits of his own motion.	Secretary of state must require affidavits that corporations are not connected with any trust.	Cases under acts have precedence.	Same as in Tennessee.		Need not show all members. Act of agent prima facie proof against principal.	Guilty for combinations joined in business State.
UTAH	1896, Revised Statutes, § 1752-1762.	Combinations to prevent free competition in the production, importation, or sale of goods, or to regulate the price of goods, transportation or professional services; and issuing or owning trust certificates.		Conspiracy to defraud.		He must notify a corporation connected with a trust to withdraw, and on failure to do so within thirty days, prosecute it to take away its charter.		Any court of competent jurisdiction.				
WASHINGTON	1889, Constitution, Art. 12, § 22.	Combinations to limit prices shall not be allowed.										
WISCONSIN	Laws of 1893, Chapter 219, amended by laws of 1897, Chapter 357. Laws of 1897, Chapter 356.	All combinations (1) that tend to prevent free competition in the production, importation, or sale of goods, or to fix or regulate the price; (2) that fix fire and marine insurance rates.	Labor unions and combinations to legitimately promote manufacturing and trade. Under (2) in cities and villages a local association may maintain rates.	Conspiracy		Having reason to believe a corporation is violating the act, he may call for affidavit as to whether it is, and for neglect to furnish it proceed to take away its charter. He must bring suits to enjoin violations.		Circuit court may restrain violation.	Persons connected with a trust can be compelled to testify and produce books and papers, but such evidence can not be used against the witnesses.	Attorney-general may require affidavit of a corporation as to whether it is connected with a trust. On neglect to furnish it, the corporation forfeits its charter.		

UNITED STATES AGAINST TRUSTS AND INDUSTRIAL COMBINATIONS—Continued.

					PENALTIES.									STATE.
Cases.	Affidavits.	Proof.	Injunction.	Disposition of fines.	Imprisonment.	Individual fines.	Firm and corporation fines.	Contracts unenforceable.	Debts uncollectible.	Damages.	Forfeiture of franchise.	Forfeiture of goods.	Foreign corporations.	
ected with a compelled to produce books out such evi-ot be used itnesses. nessee.					Penitentiary, one to ten years.	To limit output of coal, not less than \$1,000. Other acts \$100 to \$5,000 fine, or imprisonment, or both.	To limit output of coal, not less than \$1,000. Other acts \$100 to \$5,000.	Contracts made by a trust can not be enforced.	If canse of action grows out of trust, that may be pleaded in bar.	Any person injured may recover what he paid for the goods controlled by the trust.	Guilty domestic corporation forfeits franchise.		Guilty foreign corporation excluded from State.	TENNESSEE.
		Need not show all members. Act of agent prima facie proof against principal.	Guilty foreign corporations may be enjoined from doing business in this State.		One to ten years in penitentiary.	Each day is an offense; \$200 to \$5,000 fine, or imprisonment, or both.	\$200 to \$5,000.	Contracts contrary to this law are void.	Price of goods sold can not be collected.		Guilty domestic corporation forfeits franchise.		Guilty foreign corporation excluded from State, and may be kept out by injunction.	TEXAS.
					Not exceeding one year in county jail.	\$100 to \$1,000 fine, or imprisonment, or both.	First offense, \$500 to \$5,000; second offense, \$500 to \$5,000; third offense, \$5,000 to \$10,000; subsequent offenses, \$15,000.			Treble damages may be recovered by one injured.	If on notice of thirty days it does not withdraw it forfeits its franchise.			UTAH.
ected with a compelled to produce books out such evi-ot be used itnesses.	Attorney-general may require affidavit of a corporation as to whether it is connected with a trust. On neglect to furnish it, the corporation forfeits its charter.					(1) \$50 to \$3,000 for each offense.	(1) \$50 to \$3,000 for each offense. (2) For each violation, \$500.	Contracts to combine are void.		Any person injured may recover his damages and costs of suit.	A domestic corporation forfeits its franchise for a violation of this law.		Commissioner of insurance to revoke licenses of all guilty insurance companies.	WASHINGTON WISCONSIN.

PART II.

DIGEST OF CORPORATION LAWS, APPLICABLE TO
LARGE INDUSTRIAL COMBINATIONS.

PREPARED BY
FREDERIC J. STIMSON,
ADVISORY COUNSEL.

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INTRODUCTORY NOTE.

This report deals with the statutory corporation law of the several States and Territories with regard to the following specific matters, viz:

- I. The amount of the authorized capital stock.
- II. The organization tax or license fee.
- III. The precise method of paying in the capital stock, whether cash, property, or no payment necessary.
- IV. The amount of the stockholders' liability for debts of the corporation.
- V. The statutory powers and limitations of corporations.
 - (a) Their power to consolidate with other corporations.
 - (b) Their power to lease or contract with other corporations.
 - (c) Their power to own the stock of other corporations.
 - (d) Limitations on character of business the corporation is permitted to carry on.

Only such laws and enactments as apply to ordinary business corporations organized for pecuniary profit are included. The laws with regard to foreign, municipal, charitable, insurance, and banking corporations, loan associations and trust companies, and public or quasi-public corporations, such as railroads, express, canal, telephone, telegraph, gas, and electric-light companies are not given unless expressly so stated; and the terms "any corporation" and "other corporations" wherever used are to be understood as restricted to the field covered by this report.

This report is complete down to and including all the published laws of 1899.

TABLE OF CITATIONS.

Citations are made from the following codes and compilations in the various States and Territories:

Alabama: Code of Alabama, 1896.

Arizona: Revised Statutes of Arizona, 1887.

Arkansas: Sandel and Hill's Digest of the Statutes of Arkansas, 1894.

California: Deering's Annotated Codes and Statutes of California, 1885.

Colorado: Mills's Annotated Statutes of Colorado, 1891.

Connecticut: General Statutes of Connecticut, 1888.

District of Columbia: Compiled Statutes of the District of Columbia, 1894.

Florida: Revised Statutes, 1892.

Georgia: Code of Georgia, 1895.

Idaho: Revised Statutes of Idaho, 1887.

Illinois: Starr and Curtis's Annotated Illinois Statutes, 1896.

Indiana: Indiana Statutes, 1894.

Indian Territory: Indian Territory Statutes, 1899.

Iowa: McClain's Annotated Code of Iowa, 1888.

Kansas: General Statutes of Kansas, 1889.

Kentucky: Kentucky Statutes, 1894.

Louisiana: Revised Laws of Louisiana, 1897.

Maine: Revised Statutes of Maine, 1884.

Maryland: Public General Laws of Maryland, 1888.

Massachusetts: Public Statutes of Massachusetts, 1882.

Michigan: Howell's Annotated Statutes and Supplement, 1890.

Minnesota: Statutes of Minnesota, 1894.

Mississippi: Annotated Code of Mississippi, 1892.

Missouri: Revised Statutes of Missouri, 1889.

Montana: Montana Civil Code, 1895.

Nebraska: Compiled Statutes of Nebraska, 1895.

Nevada: General Statutes of Nevada, 1885.

New Hampshire: Public Statutes of New Hampshire, 1891.

New Mexico: Compiled Laws of New Mexico, 1897.

New York: General Laws of New York, 1896.

North Carolina: Code of North Carolina, 1883.

North Dakota: Revised Code of North Dakota, 1895.

Ohio: Annotated Statutes of Ohio, 1897.

Oklahoma: Statutes of Oklahoma, 1893.

Oregon: Hill's Annotated Laws of Oregon, 1892.

Pennsylvania: Pepper and Lewis Digest of the Laws of Pennsylvania (cited by topics), 1894.

- Rhode Island*: General Laws of Rhode Island, 1896.
South Carolina: Revised Statutes of South Carolina, 1893.
South Dakota: Annotated South Dakota Statutes, 1899.
Tennessee: Code of Tennessee, 1896.
Texas: Revised Statutes of Texas, 1895.
Utah: Revised Statutes of Utah, 1898.
Vermont: Vermont Statutes, 1894.
Virginia: Code of Virginia, 1887.
Washington: General Statutes of Washington, 1891.
West Virginia: Code of West Virginia, 1891.
Wisconsin: Wisconsin Statutes: Sanborn and Berryman's Annotations,
1898.
Wyoming: Revised Statutes of Wyoming, 1887.

DIGEST OF CORPORATION LAWS.

I.

THE AMOUNT OF THE AUTHORIZED CAPITAL STOCK.

A. THE STATUTORY MINIMUM.

a. **Five hundred dollars (\$500).**

Vt.: Stat., § 3728.

Va.: Code, § 1148; L. 1890, p. 56.

b. **One thousand dollars (\$1,000).**

Me.: L. 1891, Ch. 99.

Mass.: Corporations for cooperative trade. P. S., Ch. 106, § 9.

Mich.: Corporations for manufacturing cheese or other products of milk. Stat., § 4161, a, 1.

N. H.: P. S., Ch. 147, § 6.

c. **Two thousand dollars (\$2,000).**

Del.: L. 1899, Ch. 273, § 7, ¶ 4.

Mo.: R. S., § 2772.

N. J.: L. 1898, Ch. 172, § 2.

d. **Five thousand dollars (\$5,000).**

La.: L. 1888, p. 27.

Mass.: Except corporations for cooperative trade. (See a, 2, supra) P. S., Ch. 106, §§ 8, 9, 11, 13, 14; L. 1899, Ch. 199.

Mich.: Except corporations for manufacturing cheese, etc. (See a, 2, supra.) Stat., § 4161, a, 1.

e. **Ten thousand dollars (\$10,000).**

Minn.: Except manufacturing or mechanical corporations. Stat., §§ 2797, 2806.

B. THE STATUTORY MAXIMUM.

a. **One hundred thousand dollars (\$100,000).**

Mass.: Corporations for cooperative trade. P. S., Ch. 106, § 9.

b. **Five hundred thousand dollars (\$500,000).**

Mass.: Except corporations for cooperative trade (see b, 1 supra); and except manufacturing and mechanical corporations, unlimited. P. S., Ch. 106, §§ 8, 11, 13, 14; L. 1899, Ch. 199.

- c. **One million dollars (\$1,000,000).**
N. H.: P. S., Ch. 147, § 6.
No. Car.: L. 1899, Ch. 170.
Pa.: Except mechanical, mining, quarrying, or manufacturing corporations. (*See b, 4, infra.*) *Corp.*, § 38;
P. L., 1899, p. 189, § 2.
Vt.: Stat., § 3728.
- d. **Five million dollars (\$5,000,000).**
Mich.: Stat., § 4161, a, 1.
Pa.: Mechanical, mining, quarrying, or manufacturing corporations (but may increase subsequently to any amount). *Corp.*, § 38; P. L., 1899, p. 189, § 2.
W. Va.: Code, Ch. 54, § 5.
- e. **Ten million dollars (\$10,000,000).**
Ala.: Civ. Code, § 1259.
Me.: R. S., Ch. 48, § 16; L. 1891, Ch. 99.
Mo.: R. S., § 2772.
- f. **The maximum shall not exceed twenty times the minimum capital.**
Va.: L. 1890, p. 56.
- g. **There is no limitation either on the maximum or minimum amount of capital in the following States and Territories:**
Ariz.; *Ark.;* *Cal.;* *Col.;* *Conn.;* *D. C.;* *Fla.;* *Ga.;* *Ida.;* *Ill.;*
Ind.; *Ind. Terr.;* *Ia.;* *Kan.;* *Ky.;* *Md.;* *Miss.;* *Mont.;* *Neb.;*
Nev.; *N. Mex.;* *N. Y.;* *N. Dak.;* *O.;* *Okla.;* *Ore.;* *Rd. I.;*
S. Car.; *S. Dak.;* *Tenn.;* *Tex.;* *Utah;* *Wash.;* *Wis.;* *Wyo.;*

II.

THE ORGANIZATION TAX OR LICENSE FEE.

(NOTE.—This title does not include annual taxes, nor the nominal clerical fees for the recording or publication of the articles of incorporation—usually fixed at so much per page—which have not been deemed of sufficient importance for tabulation.)

A. THE FEE IS GRADED ACCORDING TO THE AMOUNT OF CAPITAL STOCK.

1. Domestic or foreign corporations with capital up to

\$50,000, fee	\$25
Over \$50,000, but not exceeding \$100,000, fee	50
Over \$100,000, but not exceeding \$250,000, fee	75
Over \$250,000, but not exceeding \$500,000, fee	100
Over \$500,000, but not exceeding \$1,000,000, fee	200
Over \$1,000,000, fee	250

Ala.: Civ. Code, §§ 1287, 1321.
2. Domestic or foreign corporations with capital up to

\$50,000, fee	\$10.00
For each \$1,000 in excess of \$50,000, fee15
For each \$1,000 of subsequent increase, fee15
For each \$1,000 in case of consolidation, fee15

Col.: L. 1897, p. 157.

3. Corporations which are not limited by their charter to doing business within the State:

For each \$1,000 of subscribed capital stock up to \$5,000,000, fee	\$0.50
For each \$1,000 in excess of \$5,000,000, fee10
For each \$1,000 of subsequent increase, fee10

Conn.: P. L. 1899, p. 1147.

4. On capital stock up to \$2,500, fee..... \$30
 Over \$2,500, but not exceeding \$5,000, fee..... 50
 On each \$1,000 in excess of \$5,000, fee 1 || Where increase up to \$5,000 franchise shall not be acquired less than | 50 |
| On each \$1,000 of increase in excess of \$5,000, fee | 1 |

Ill.: Stat., Ch. 32, § 62; L. 1899, p. 117.

5. On capital up to \$10,000, fee..... \$25
 For each \$1,000 in excess of \$10,000, fee..... 1
 For each \$1,000 of subsequent increase, fee..... 1
 But in no case shall the fee exceed 2,000 |

Ia.: L. 1898, Ch. 40.

6. On first \$100,000 of capital stock, fee $\frac{1}{10}$ of 1%
 On next \$400,000 or fraction thereof, fee .. $\frac{1}{20}$ of 1%
 For each \$1,000,000 or major part thereof, fee \$100
 For subsequent increase, fee $\frac{1}{10}$ of 1% |

Kan.: L. 1898, Ch. 10, §§ 6, 7.

7. (a) Corporations authorized by special charter:

Where capital stock does not exceed \$5,000, fee...	\$15
Over \$5,000, but not exceeding \$10,000, fee.....	25
Over \$10,000, but not exceeding \$50,000, fee.....	75
Over \$50,000, but not exceeding \$100,000, fee.....	125
For each \$100,000 or fraction thereof in excess of \$100,000, fee	60

- (b) Corporations organized according to general law:

Where capital stock does not exceed \$10,000, fee..	\$10
Over \$10,000, but not exceeding \$500,000, fee.....	50
For each \$100,000 in excess of \$500,000, fee	10
For each \$100,000 of increase (but in no case less than \$40), fee.....	10

Me.: L. 1893, Chs. 185, 212; L. 1897, Ch. 225.

8. Where capital stock does not exceed \$50,000, fee..... \$50
 For each \$10,000 or fraction thereof in excess of \$50,000, fee 5 || For each \$10,000 or fraction thereof of subsequent increase, fee..... | 5 |

Minn.: Stat., §§ 3391, 3392.

Except corporations for strictly manufacturing purposes. Stat., § 3393.

Foreign corporations on same footing as domestic. Stat., § 3425.

Mo.: Constit. Art. 10, §21; R. S., §2493.

Same fees for *foreign* corporations upon the proportion of their capital stock represented by property located and business transacted in the State. L. 1891, pp. 75, 101.

For certificate of incorporation, fee of \$10, L. 1899, p. 130, §3.

No. Dak.: Civ. Code, §2865.

9. For capital stock up to \$1,000,000 for each \$1,000, fee. \$0.50
For capital stock in excess of \$1,000,000 for each \$1,000,
fee25

But in no case shall the fee be less than \$20 or more than \$1,000.

Mont.: L. 1899, Ch. 151, §1.

10. Corporations which are not to carry on business or have their principal office within the State:

Where amount of capital stock or increase does not exceed \$25,000, fee	\$10
Over \$25,000, but not exceeding \$100,000, fee	25
Over \$100,000, but not exceeding \$500,000, fee	50
Over \$500,000, but not exceeding \$1,000,000, fee	100
Over \$1,000,000	200

N. H.: P. S., Ch. 14, §§ 5, 6; L. 1895, Ch. 18.

11. (a) Domestic or *foreign* corporations for mining, milling, or smelting:

For capital stock not exceeding \$100,000, fee.....	\$25
For each additional \$100,000 or fraction thereof, fee ..	5

- (b) Domestic or *foreign* corporations for manufacturing or other industrial purposes:

For capital stock not exceeding \$10,000, fee	\$10.00
For each additional \$5,000 or fraction thereof, fee	2.00
For each \$1,000 of subsequent increase or decrease, fee25

N. Mex.: L. 1899, p. 171, § 1.

12. *Foreign* corporations with capital not exceeding \$100,000, fee
- | | |
|--|------|
| Over \$100,000, but not exceeding \$300,000, fee | \$15 |
| Over \$300,000, but not exceeding \$500,000, fee | 20 |
| Over \$500,000, but not exceeding \$1,000,000, fee | 25 |
| Over \$1,000,000, fee | 30 |
| Over \$1,000,000, fee | 50 |

Ohio: Stat., § 3269, ¶ 5; L. 1898, p. 228.

13. Where capital stock does not exceed \$5,000, fee..... \$5
Over \$5,000, but not exceeding \$25,000, fee 10 || Over \$25,000, but not exceeding \$50,000, fee | 15 |
| Over \$50,000, but not exceeding \$100,000, fee | 20 |
| Over \$100,000, but not exceeding \$250,000, fee | 25 |
| Over \$250,000 for each additional \$10,000, fee | 1 |

Same rate for increase.

So. Car.: L. 1896, No. 45, §§ 9, 10; L. 1899, p. 54.

14. (a) Domestic corporations:
 Where capital stock does not exceed \$10,000, fee . \$25
 For each additional \$10,000 or fraction thereof, fee 5
- (b) Foreign corporations:
 Where capital stock does not exceed \$100,000, fee.. \$25
 Over \$100,000, but less than \$500,000, fee..... 50
 \$500,000, but less than \$1,000,000, fee 100
 Over \$1,000,000, fee 200
- Tex.:* R. S., Art. 2439.
15. (a) Corporations organized according to general law:
 Where capital stock does not exceed \$5,000, fee .. \$10
 Over \$5,000, but not exceeding \$10,000, fee..... 25
 Over \$10,000, but not exceeding \$50,000, fee..... 50
 Over \$50,000, but not exceeding \$200,000, fee..... 100
 Over \$200,000, but not exceeding \$500,000, fee.... 200
 Over \$500,000, but not exceeding \$1,000,000, fee.. 300
 Over \$1,000,000, fee 500
- (b) Corporations authorized by special act of the legislature:
 Where capital stock does not exceed \$10,000, fee. \$25
 Where capital stock exceeds \$10,000 the fee shall be
 same as for corporations organized according to
 general law, *supra*.
- Vt.:* Laws 1898, p. 14.
16. (a) Corporations created by general law:
 (b) Corporations created by special charter:
 (c) Foreign corporations:
 Where stock does not exceed \$5,000, fee, (a) \$15; (b)
 \$25; (c) \$5.
 Over \$5,000, but not exceeding \$10,000, fee, (a) \$30;
 (b) \$50; (c) \$10.
 Over \$10,000, but not exceeding \$25,000, fee, (a) \$45;
 (b) \$75; (c) \$15.
 Over \$25,000, but not exceeding \$50,000, fee, (a) \$75;
 (b) \$125; (c) \$25.
 Over \$50,000, but not exceeding \$100,000, fee, (a) \$125;
 (b) \$200; (c) \$40.
 Over \$100,000, but not exceeding \$300,000, fee, (a) \$195;
 (b) \$325; (c) \$65.
 Over \$300,000, but not exceeding \$500,000, fee, (a) \$270;
 (b) \$450; (c) \$90.
 Over \$500,000, but not exceeding \$800,000, fee, (a) \$345;
 (b) \$575; (c) \$115.
 Over \$800,000, but not exceeding \$1,000,000, fee, (a)
 \$450; (b) \$750; (c) \$150.
 Over \$1,000,000, fee, (a) \$600; (b) \$1,000; (c) \$200.
 And same proportionate fee for increase.
- Va.:* L. 1892, p. 393; L. 1898, p. 678.
17. Where capital stock does not exceed \$25,000, fee.... \$25.00
 For each \$1,000 in excess of \$25,000, fee..... 1.00
 For each \$1,000 of subsequent increase, fee..... .50
 Wis.: Stat., § 1772.

18. Where stock of domestic or foreign corporation does not exceed \$5,000, fee..... \$5.00
Over \$5,000, but not exceeding \$100,000, fee..... 10.00
Over \$100,000, for each additional \$1,000, fee..... .05
Wyo.: L. 1897, p. 74.

B. THE FEE IS A FIXED PERCENTAGE UPON THE AMOUNT OF CAPITAL STOCK.

1. $\frac{1}{100}$ of 1% (10 cents on each \$1,000).
And same fee for increase.
Conn.: For corporation limited by its charter to business within the State. P. L., 1899, p. 1147.
Nebr.: Same fee for foreign corporations and for consolidation. L. 1897, Ch. 72.
2. $\frac{3}{100}$ of 1% (15 cents on each \$1,000).
But in no case less than \$20.
Del.: L. 1899, Ch. 273, § 127.
3. $\frac{1}{50}$ of 1% (20 cents on each \$1,000).
But in no case less than \$25.
Same rate for increase but in no case less than..... 20
Same rate for consolidation upon amount in excess of the combined original capital stocks.
N. J.: L. 1896, Ch. 185, § 114.
4. $\frac{1}{40}$ of 1% (25 cents on each \$1,000).
For issuing certificate of incorporation \$5. Same rate for increase.
Same rate for foreign corporation organized for purpose of carrying on business within the State.
But whole amount shall not exceed \$2,500.
Utah: R. S., § 965.
5. $\frac{1}{20}$ of 1%.
But in no case less than \$5.
Mass.: But whole fee shall not exceed \$200. P. S., Ch. 106, § 84.
Mich.: Domestic or foreign corporation (same fee in case of consolidation). L. 1893, No. 79; L. 1895, No. 91.
6. $\frac{1}{10}$ of 1%.
Ind.: { But in no case less than \$10. Same fee for increase.
Same fee for consolidation with no deduction on
Ohio: { account of fees previously paid. *Ind.*: Stat., § 7631;
Ohio: Stat., § 148; a, 1, 3.
Ky.: Stat., § 4226.
R. I.: But in no case less than \$100; and same fee for increase. G. L., Ch. 29, § 16.
Tenn.: (Also \$3 each to register of deeds and secretary of state. Code, § 2039). L. 1897, Ch. 32.
7. $\frac{1}{2}$ of 1%.
Md.: Same fee for increase. L. 1894, Ch. 114.
N. Y.: Same for foreign corporation computed upon capital stock employed by it within the State for the first year (also \$10 for filing articles. G. L., Ch. 9, § 26).
L. 1896, Ch. 908, §§ 180, 181.

8. $\frac{1}{2}$ of 1% (\$2 on each \$1,000).

But not less than \$5 or more than \$250. Same fee for increase.

Fla.: L. 1893, Ch. 4169.

9. $\frac{1}{2}$ of 1%.

Same fee for increase.

Pa.: P. L., 1899, p. 189, § 1.

Also corporations created by special act must have such act enrolled and pay therefor.

(a) Iron, coal, manufacturing, mining, warehousing, or oil company, fee of \$200.

(b) Other corporations, fee of \$20. *Taxation*, § 25.

C. THE FEE IS A FIXED SUM INDEPENDENT OF THE AMOUNT OF CAPITAL STOCK.

1. No provision is made for the payment of any fee.

District of Columbia.

2. Fee of \$2.50 for filing articles of incorporation.

Ore.: L., § 2337.

3. Not less than \$3 for filing articles of incorporation.

Miss.: Code, § 2037.

4. Fee of \$5.

Ga.: For recording articles of incorporation. Code, § 5397.

La.: For approval of charter by district attorney. L. 1896, p. 178.

Nev.: G. S., § 1798.

5. Fee of \$5 for filing articles and \$3 for issuing certificate of incorporation.

Ari.: For filing increase or decrease, \$2.50; certificate, \$2.50.

R. S., § 1964.

Cal.: Same fee for each increase or decrease. Pol. Code, § 416.

Ida.: R. S., § 196.

Okla.: Stat., § 2900.

6. Fee of \$10.

Mass.: Foreign corporation only. L. 1884, Ch. 330.

N. J.: Foreign corporation only. L. 1896, Ch. 185, § 114.

So. Dak.: Domestic or foreign corporation. Stat., § 1911.

7. Fee of \$10; also \$4 for certificate of incorporation and 50 cents for recording the same.

W. Va.: Domestic corporations whose principal place of business is within the State (also annual fee of \$10). Code, Ch. 54, § 18. Cf. c, 10 infra.

8. Fee of \$10 for filing articles and \$5 for certificate of incorporation.

Wash.: L. 1897, p. 134.

9. Fee of \$25 for filing articles of incorporation.

Ark.: Also \$10 for amendment. Stat., § 3229.

Ind. Terr.: Stat., § 2212.

Md.: Foreign corporations only. L. 1898, Ch. 270.

No. Car.: Same fee when incorporated by special legislative charter. Code, § 696; L. 1885, Chs. 36, 93.

Utah: Foreign corporations not organized for doing business in this State. R. S., § 965.

10. Fee of \$50.

N. H.: Corporations doing business and having principal office within the State. P. S., Ch. 14, § 5.

W. Va.: Corporations with principal place of business outside the State. Code, Ch. 32, § 87. Cf. c, 7, supra.

III.

THE PRECISE METHOD OF PAYING IN THE CAPITAL STOCK.

A. IN WHAT PAYMENT MAY BE MADE.

a. Payment by means of a note or other obligation of the stockholder would generally be held insufficient.

This is expressly provided in certain of the states, e. g.:

Ida.: R. S., § 7117.

Mass.: P. S., Ch. 106, § 47.

Miss.: Code, § 850.

Mo.: R. S., § 2775.

N. H.: P. S., Ch. 150, § 9.

b. Stock must be paid for in money:

D. C.: Comp. Stat., Ch. 15, § 49.

Ind.: Stat., § 5060 } Full amount of capital stock must be paid
Minn.: Stat., § 3415 } into the treasury.

c. Stock may be paid for by labor done:

Ala.: Constit., Art. 14, § 6; Civil Code, §§ 1142, 1254.

Ark.: Constit., Art. 12, § 8.

Cal.: Constit., Art. 12, § 11; Civil Code, § 359.

Col.: Constit., Art. 15, § 9; Stat., § 618.

Del.: L. 1899, Ch. 273, § 127.

Fla.: Provided description and valuation of same given in the charter. R. S., § 2128.

Ida.: (Or services performed.) Constit., Art. 11, § 9; L. 1899, p. 158.

Ky.: Constit., § 193; Stat., § 568.

La.: Constit., Art. 266.

Mo.: Constit., Art. 12, § 8; R. S., § 2499.

Mont.: Constit., Art. 15, § 10.

No. Dak.: Civ. Code, § 2877.

So. Car.: Constit., Art. 9, § 10; R. S., § 1511; L. 1897, No. 333, § 4.

Tex.: Constit., Art. 12, § 6.

Utah: Constit., Art. 12, § 5.

Va.: (Or services.) Code, § 1148; L. 1890, p. 56.

Wash.: Constit., Art. 8, § 6.

Wis.: Stat., § 1753; L. 1899, Chap. 193.

d. Stock may be paid for in property:**1. In property of a specified kind only:**

- (a) A manufacturing establishment, including the real estate, buildings, machinery, etc., belonging thereto.
R. I.: G. L., Chap. 180, § 8.
- (b) Mining claims. In case of a mining corporation.
Nev.: G. S., § 825.
- (c) Lands within the State.
Mich.: Stat., § 4866.
- (d) Land. In case of mining, boring, or quarrying company.
Land or any patent. In case of manufacturing company.
Tenn.: Code, §§ 2335, 2351.
- (e) Property received for the use of the corporation.
N. Y.: G. L., Ch. 36, § 42.
- (f) Property such as it is proper for the corporation to own.
Md.: G. L., Art. 23, §§ 61, 62.
- (g) Property necessary for the business of the corporation.
N. J.: L. 1896, Ch. 185, §§ 48, 49.
Pa.: Corp., § 43.
Utah: R. S., § 316 (necessary to the pursuit agreed upon).
Vt.: Stat. § 3724.
W. Va.: Code, Ch. 53, § 24 (necessary for the uses and purposes of the corporation).
Wyo.: R. S., § 513.

2. In property generally:

- Ala.*: Constit., Art. 14, § 6; Civ. Code, §§ 1142, 1254.
- Ark.*: Constit., Art. 12, § 8.
- Cal.*: Constit., Art. 12, § 11; Civ. Code, § 359.
- Col.*: Constit., Art. 15, § 9; Stat., §§ 618, 490.
- Del.*: Constit., Art. 9, § 3; L. 1899, Ch. 273, § 138.
- Fla.*: R. S., § 2128 (description and valuation must appear in the charter).
- Ida.*: R. S., § 7117.
- Ky.*: Constit., § 193; Stat., § 568.
- La.*: Constit., Art. 266.
- Mass.*: P. S., Ch. 106, § 48.
- Mo.*: Constit., Art. 12, § 8; R. S., § 2499.
- Mont.*: Constit., Art. 15, § 10 (special provision in case of mines).
- No. Dak.*: Civ. Code, § 2877.
- So. Car.*: Constit., Art. 9, § 10; R. S., § 1511; L. 1897, No. 333, § 4.
- Tex.*: Constit., Art. 12, § 6.
- Wash.*: Constit., Art. 8, § 6.
- Wis.*: Stat., § 1753; L. 1899, Ch. 193.

3. In property; which is defined as including specifically—**(a) Manufactories:**

- N. J.*: L. 1896, Ch. 185, §§ 48, 49.
- Wyo.*: R. S., § 513.

(b) Mines:

N. J.: L. 1896, Ch. 185, §§ 48, 49.*Va.*: Code, § 1148; L. 1890, p. 56.*Wyo.*: R. S., § 513.

(c) Mineral rights:

Pa.: Corp., § 43.*Va.*: Code, § 1148; L. 1890, p. 56.

(d) Patents:

Conn.: G. S., § 1947.*Pa.*: Corp., § 43.

(e) Leases, options, rights of way and other easements:

Va.: Code, § 1148; L. 1890, p. 56.

e. Stock may be paid for in some other matter or thing instead of in money.

Me.: R. S., Ch. 46, § 45.

f. There is no provision as to the medium or method of payment in the following States and Territories, viz:

Ariz.; *Ga.*; *Ill.*; *Ind. Ter.*; *Iowa*; *Kan.*; *Miss.*; *Neb.*; *N. H.*;*N. Mex.*; *No. Car.*; *Ohio*; *Okla.*; *Ore.*; *So. Dak.*

B. THE METHOD OF VALUATION WHERE THE STOCK IS NOT PAID FOR IN MONEY.

a. Where payment is authorized in a medium other than money the same shall be taken at the value thereof.

1. Generally; the basis of value not being otherwise defined:

Pa.: Corp., § 43.*Wash.*: G. S., § 1588.*Wyo.*: R. S., § 513.

2. At the actual value:

Conn.: Stat., § 1947.

3. At the true money value:

No. Dak.: On penalty of officers being liable for excess valuation. Civ. Code, § 2877.*So. Car.*: And approved by the board of corporators. R. S., § 1511; L. 1897, No. 333, § 4.

4. At the fair cash value:

Me.: A bona fide and fair valuation. R. S., Ch. 46, § 45.*Mass.*: As sworn to by the president, treasurer, and majority of the directors; and in case of a *foreign* corporation the stockholders participating in the unfair valuation are liable for the debts of the corporation. P. S., Ch. 106, § 48; L. 1897, Ch. 423.*Tenn.*: Code, § 2335.*Utah*: As verified (except in mining and irrigating companies) by the sworn affidavit of three persons. R. S., § 316.

5. At the reasonable value:

Ala.: Civ. Code, §§ 1142, 1254.

6. At the appraised value:

R. I.: G. L., Ch. 180, § 8.

7. At the valuation mutually agreed upon between the subscriber and the corporators:
Fla.: And the same must appear in the charter. R. S., § 2128.
Md.: As fixed at a special meeting. G. L., Art. 23, §§ 61, 62.
W. Va.: Code, Ch. 53, § 24.
8. At the market price:
Ky.: Stat., § 568.
9. At the value bona fide determined by the directors:
Col.: Stat., §§ 618, 490.
Del.: And such valuation is conclusive. L. 1899, Ch. 273, § 138.
N. J.: L. 1896, Ch. 185, § 49.
- b. Such medium need not be accepted at the value thereof:
Mont.: Code, § 410. "On mines any arbitrary value may be fixed and such value shall be regarded as the value thereof so as to make stock issued therefor at such arbitrary value full paid stock."

IV.

THE AMOUNT OF THE STOCKHOLDERS' LIABILITY FOR DEBTS OF THE CORPORATION:

- a. **Stockholders have no individual liability:**
Nev.: Constit., Art. 8, § 3.
- b. **There is no provision for any individual liability:**
Ind. Ter., N. Mex.: *No. Car.* (except for fraud. Code, § 686).
- c. **Stockholders are individually liable for any refund or reduction of the capital stock before the payment of all corporate debts.**
 1. With no provision for further liability:
Ark.: To the extent of the refund to them respectively. Stat., § 1348.
Conn.: For all debts of the corporation at the time of reduction. Stat., § 1954.
 2. In addition to other liability:
 - (a) Stockholders' liability is not impaired by any reduction of the capital stock:
N. J.: L. 1896, Ch. 185, § 29.
See also: g, 4; h; i.
So. Car.: L. 1899, No. 38, § 3.
Cf. g, 1.
 - (b) Stockholders are jointly and severally liable to the extent of sums withdrawn and paid to stockholders:
Mass.: P. S., Ch. 106, § 61. Same liability for stockholders of foreign corporations. L. 1896, Ch. 391.
See also: d, 2; g, 4; i.
Miss.: Code, § 852.
See also: g, 4.

- (c) Stockholders are individually liable to the extent of the refund to them respectively:

Me.: R. S., Ch. 46, § 44, 47.

See also: *g*, 4.

Mich.: Stat., § 4161 (c).

See also: *d*, 2.

Minn.: In case of manufacturing corporation. Stat., § 2822.

See also: *g*, 3; *h*; *i*.

Vt.: Stat., § 3726.

See also: *g*, 4.

Wis.: Stat., § 1755 (and those voting for reduction are liable to the extent of the whole amount refunded).

See also: *d*, 2; *g*, 4.

- (d) Stockholders are individually liable for the debts of the corporation at the time of reduction.

Ind.: Stat., § 3430.

See also: *d*, 2; *f*.

Pa.: In case of mechanical, mining, quarrying, or manufacturing companies. *Manufacturing Companies*, § 4.

See also *d*, 2.

R. I.: In case of manufacturing corporations.

G. L., Ch. 180, § 5.

See also *g*, 4; *h*.

d. Stockholders are individually liable for debts due mechanics and laborers for work performed for the corporation:

1. With no provision for further liability:

Pa.: Iron and steel manufacturing companies for a period of six months only. *Iron Manufacturing Companies*, § 9.

Other corporations except manufacturing, mechanical and mining corporations (to the extent of amount of stock held by each stockholder). *Corp.*, § 68.

2. In addition to other liability:

D. C.: Comp. Stat., Ch. 15, § 58. *See also*: *g*, 4.

Ind.: Manufacturing, mining, and mechanical corporations. Stat., § 5077.

See also: *c*, 2 (d); *f*.

Mass.: For services within six months of demand. P. S., Ch. 106, § 61.

Similar liability of stockholders in *foreign* corporations. L. 1896, Ch. 391.

See also: *c*, 2 (b); *g*, 4; *i*.

Mich.: Stat., § 4161 (c) 8.

See also: *c*, 2 (c).

N. Y.: G. L., Ch. 36, § 55.

See also: *g*, 4; *i*.

No. Dak.: Manufacturing and mining corporations. Civ. Code, § 3157.

See also: g, 4.

Pa.: Manufacturing, mechanical, mining, and quarrying companies, for services within six months and not over \$200 in amount. *Manufacturing Companies*, § 11.

See also: c, 2 (d).

Tenn.: Mining, quarrying, boring, printing, publishing, or manufacturing companies. Code, § 2337.

See also: g, 4.

Wis.: For not more than six months liability (to an amount equal to the amount of stock owned by them). Stat., § 1769.

See also: c, 2 (c); g, 4.

e. Stockholders are individually liable for their proportionate part of the corporate debts:

Cal.: For such proportion of the corporate debts as the amount of their stock bears to the whole of the subscribed stock. Constit., Art., 12, § 3; Civ. Code, § 322.

f. Stockholders are individually liable to the extent of the amount of stock owned by them when the debt was contracted:

Ind.: Stat., § 3451. *See also: c, 2 (d); d, 2.*

Cf. d, 1, Pa.; and *d, 2, Wis.*; *supra*. *Cf. also g, 3, infra.*

g. Stockholders are individually liable to the extent of the amount unpaid of the stock held or subscribed for by them until all the stock is paid in:

1. Stockholders are not otherwise liable.

Ala.: Constit., Art. 14, § 8; Civ. Code, § 2182.

Ari.: If the charter exempts them (otherwise for their proportionate part of the debts). R. S., §§ 245, 234 ¶ 7.

Fla.: R. S., §§ 2152, 2156.

Ida.: Domestic and *foreign* corporations, except in case of fraud. R. S., § 2609; L., 1899, p. 157ff.

La.: R. L., § 690.

Okla.: Stat., § 930.

Ore.: Constit., Art. 11, § 3.

So. Car.: Constit., Art. 9, § 18. (*Cf. c, 2 (a)*).

So. Dak.: Stat., § 3851. -

Tex.: R. S., §§ 671, 686.

Utah: R. S., § 331.

Va.: Code, § 1148.

Wash.: Constit., Art. 12, § 4; G. S., § 1511.

W. Va.: Constit., Art. 11, § 2.

Wyo.: R. S., § 512.

2. There is no provision for any further liability:

Col.: Stat., § 486, 497.

Del.: Or such proportion as will satisfy the debts of the corporation. L. 1899, Ch. 273, § 46.

D. C.: Comp. Stat., Ch. 15, § 46.

Ga.: Code, §§ 2350, 3; 1892.

Ill.: Stat., Chap. 32, § 8.

Md.: G. L., Art. 23, § 64.

Mo.: Limited to amount of their stock. Constit., Art. 12, § 9; R. S., § 2517.

Mont.: Civ. Code, § 470.

N. H.: P. S., Ch. 150, § 8.

3. Stockholders are individually liable to the extent of their unpaid subscriptions upon the capital stock, and in addition for an amount equal to the par value of their stock:

Kan.: Constit., Art. 12, § 2; L. 1898, Ch. 10, § 15.

Ky.: Stat., § 547.

Minn.: Constit., Art. 10, § 3; Stat., § 2600.

See also: *c*, 2 (*c*); *h*; *i*.

Ohio: Constit., Art. 13, § 3; Stat., § 3258.

4. Stockholders are individually liable for their unpaid subscriptions upon the capital stock in addition to other liabilities:

D. C.: Comp. Stat., Ch. 15, § 46.

See also: *d*, 2.

Fla.: R. S., §§ 2152, 2156.

See also: *h*; *i*.

Ia.: Code, § 1632.

See also: *h*; *i*.

Me.: R. S., Ch. 46, §§ 44, 47.

See also: *c*, 2 (*c*).

Mass.: Domestic or foreign corporations P. S., Ch. 106, § 61; L. 1896, Ch. 391.

See also: *c*, 2 (*b*); *d*, 2; *h*; *i*.

Miss.: Limited to amount of stock owned by them. Code, § 844.

See also: *c*, 2 (*b*).

Neb.: Constit., Art. 13, § 4.

See also: *h*.

N. J.: L. 1896, Ch. 185, § 21.

See also: *c*, 2 (*a*); *h*; *i*.

N. Y.: G. L., Ch. 36, § 54.

See also: *d*, 2; *i*.

No. Dak.: Civ. Code, § 2902.

See also: *d*, 2.

R. I.: Manufacturing corporations. G. L., Ch. 180, § 1.

See also: *c*, 2 (*d*); *h*.

Tenn.: Code, § 2058.

See also: *d*, 2.

Vt.: Stat., § 3725.

See also: *c*, 2 (*c*).

Wis.: Stat., § 1756.

See also: *c*, 2 (*c*); *d*, 2.

h. Stockholders are individually liable for failure of the corporation to obey certain regulations with regard to organization and publicity:

Fla.: On penalty of being liable as members of a partnership.
L. 1893, Ch. 4169.

See also: *g*, 4; *i*.

Ia.: Code, § 1618.

See also: *g*, 4; *i*.

Minn.: Stat., § 2796.

See also: *c*, 2 (*c*); *g*, 3; *i*.

Neb.: To the extent of their unpaid subscriptions and in addition to the amount of stock owned by them. Stat., § 139.

See also: *g*, 4.

N. J.: L. 1896, Ch. 185, §§ 92, 94.

See also: *c*, 2 (*a*); *g*, 4; *i*.

R. I.: G. L., Ch. 180, § 13.

See also: *c*, 2 (*d*); *g*, 4.

i. Any liability of the stockholders is expressly contingent upon the failure of the corporation, its dissolution leaving debts unpaid, or the return of an unsatisfied execution against it:

Art.: R. S., § 245.

Col.: Stat., § 497.

Conn.: G. S., § 1954.

Del.: L. 1899, Ch., 273, § 46.

Fla.: R. S., § 2152.

Ga.: Code, § 1894.

Ill.: Stat., Ch. 32, § 25.

Ia.: Code, § 1634.

Mass.: P. S., Ch. 106, § 62.

Minn.: Stat., §§ 2601, 2796.

Mo.: R. S., § 2517.

Neb.: Stat., § 1839.

N. J.: L., 1896, Ch. 185, § 94.

N. Y.: G. L., Ch. 36, § 55.

Tex.: R. S., § 671.

V.

THE STATUTORY POWERS AND LIMITATIONS OF CORPORATIONS.

A. THEIR POWER TO CONSOLIDATE WITH OTHER CORPORATIONS.

NOTE.—Statutory prohibitions of combinations to promote monopoly, to lessen competition or to regulate prices are not given, as these belong more properly to the Report on Trusts in Part I of this volume.

a. Such power is impliedly recognized:

Ida.: Constit., Art. 11, § 14.

Kan.: L., 1898, Ch. 10, § 8.

Me.: L. 1891, Ch. 84, § 1.

b. Any two or more corporations may consolidate:

Col.: Stat., § 628.

Ind.: Stat., § 3424.

Ky.: Stat., § 555.

Nev.: Domestic corporation may consolidate with a domestic or foreign corporation. G. S., § 1075.

c. Any corporations organized for the same purpose or carrying on a similar business may consolidate:

1. Their business must be carried on in the same vicinity:

Ill.: Not more than two corporations. Stat., Ch. 32, § 65.

Utah: Domestic corporations only. R. S., § 340.

2. Without restriction as to locality:

(a) Any two corporations:

Del.: L. 1899, Ch. 273, § 54.

Md.: G. L., Art. 23, § 39; L. 1892, Ch. 366.

(b) Any two or more corporations:

N. Y.: Domestic corporations only. G. L., Ch. 41, §§ 8, 10, 11.

d. Certain specified kinds or classes of corporations may consolidate:

1. Two or more mining companies holding adjacent mining lands:

Cal.: Civ. Code, § 361.

Mont.: Civ. Code, § 527.

2. Any two corporations organized solely for manufacturing purposes and carrying on the same general business:

Mo.: R. S., §§ 2786, 2788.

3. Mining or manufacturing companies:

(a) Any two:

Ohio: Stat., § 3864.

(b) Any two or more:

Ala.: Civ. Code, §§ 1147, 1150.

4. Any two business and manufacturing companies having the same objects and general business:

La.: L. 1875, p. 18.

e. There is no statutory provision with regard to consolidation in the following States and Territories, viz:

Ari.; *Ark.;* *Conn.;* *D. C.;* *Fla.;* *Ga.;* *Ind. Ter.;* *Ia.;* *Mass.* (unless by express legislative sanction); *Mich.;* *Minn.;* *Miss.;* *Neb.;* *N. H.;* *N. J.;* *N. Mex.;* *No. Car.;* *No. Dak.;* *Okla.;* *Ore.;* *Pa.;* *R. I.;* *So. Car.;* *So. Dak.;* *Tenn.;* *Tex.;* *Vt.;* *Va.;* *Wash.;* *W. Va.;* *Wis.;* *Wyo.*

B. THEIR POWER TO LEASE OR CONTRACT WITH OTHER CORPORATIONS

a. Such power is impliedly recognized:

Ida.: Constit., Art. 11, § 5.

Me.: L. 1891, Ch. 84, § 1.

b. A corporation has the same power to contract as a private individual:

Ari.: R. S., § 233, ¶ 6.

- c. **Any domestic corporation may sell and convey all its property and franchises to any other domestic corporation of the same character:**

Mich.: Stat., § 4904e.

Mont.: Only where lessor corporation is a mining company.
L. 1899, p. 105.

- d. **A corporation may lease and dispose of its property and franchises to any other corporations engaged in a similar business:**

N. Y.: Lessee must be a domestic corporation. G. L., Ch. 36, § 40.

Pa.: Manufacturing corporations only. P. L., 1895, p. 369.

Tenn.: Domestic or *foreign* corporation. Code, § 2043.

- e. **Any domestic corporation may lease its property and franchises to any corporation:**

N. J.: L. 1899, Ch. 150.

- f. **Except in the above-mentioned States (*Ari.*; *Ida.*; *Me.*; *Mich.*; *Mont.*; *N. J.*; *N. Y.*; *Pa.*; *Tenn.*) there is no statutory provision with regard to such power.**

C. THEIR POWER TO OWN THE STOCK OF OTHER CORPORATIONS.

- a. **Corporations are expressly prohibited from owning the stock of other corporations:**

D. C.: Comp Stat., Ch. 15, § 36.

Va.: Unless specially authorized. Code, § 1070; L. 1890, p. 50.

- b. **Corporations have the same power to acquire property as private individuals:**

Ariz.: R. S., § 233, ¶ 6.

- c. **Any corporation may own the stock of any other corporation:**

Conn.: L. 1895, p. 514.

Del.: Domestic or foreign corporations. L. 1899, Ch. 273, § 133.

N. J.: L. 1896, Ch. 185, § 51.

- d. **Certain kinds or classes of corporations may own the stock of any corporation:**

Ind.: Manufacturing corporations (but, except for water companies, consent of *all* the stockholders of both corporations must first be obtained). Stat., §§ 5087, 5059.

Minn.: Corporations for mining or manufacturing metals. Stat., § 2834.

Mont.: Mining corporations. L., 1899, p. 105.

Pa.: Manufacturing corporations. P. L., 1895, p. 369.

- e. **Any corporation may own the stock of certain kinds or classes of corporations:**

Kan.: Of mutual fire insurance companies. L. 1897, Ch. 121.

Pa.: Of corporations for manufacturing iron, metals, etc.
Iron Manufacturing Companies, § 7.

f. A corporation may own the stock of another corporation engaged in a similar business or in a business in some way useful or subsidiary to the first corporation:

1. Generally:

N. Y.: G. L., Ch. 36, §§ 40, 58.

Pa.: Petroleum mining companies. *Petroleum*, § 30.

Wis.: Lumbering companies. Stat., § 1775.

Wyo.: But not otherwise. R. S., § 510.

2. May own stock in a railroad connecting with its plant or adjacent thereto:

Ill.: But in only one railroad connecting the same points. Stat., Ch. 93, § 35.

Ohio: Mining, quarrying, and manufacturing corporations may own such stock. Stat., § 3863.

Tenn.: Mining corporations may own such stock. Code, § 2339.

W. Va.: Manufacturing corporations may own such stock. Civ. Code, Ch. 52, § 4.

3. A mining corporation may own stock in any corporation constructing a tunnel, etc., to facilitate the working of the mine:

Nev.: G. S., § 829.

4. Domestic mining, mechanical, or manufacturing companies may hold stock in any corporation, domestic or foreign, for generating power and light which is used in facilitating the business of such corporation:

Wis.: Stat., § 1775.

5. A manufacturing company may own not more than 10% of stock in a gas company in the same town:

Me.: In a gas or electric light company. L. 1895, Ch. 102, § 3.

Mass.: A manufacturing or other corporation. P. S., Ch. 106, § 78.

g. There is no statutory provision with regard to such power in the following States and Territories, viz:

Ala.; *Ari.;* *Ark.;* *Cal.;* *Fla.;* *Ga.;* *Ida.;* *Ind. Ter.;* *Ia.;* *Ky.;* *La.;* *Ind.;* *Mich.;* *Miss.;* *Mo.;* *Neb.;* *N. H.;* *N. Mex.;* *No. Car.;* *No. Dak.;* *Okla.;* *Ore.;* *R. I.;* *So. Car.;* *So. Dak.;* *Tex.;* *Utah;* *Vt.;* *Wash.*

D. LIMITATIONS ON CHARACTER OF BUSINESS THE CORPORATION IS PERMITTED TO CARRY ON.

NOTE.—Restrictions which apply to railroads, banking, or insurance corporations or other corporations which, as stated in the introductory note, do not fall within the scope of this report, are not included. This section deals merely with the limitations, if any, upon the specific purposes for which an ordinary private or business corporation may be created.

a. There is no statutory limitation upon the character of such business:

Ga.; *Ind. Ter.*

- b. **Any purpose intended for pecuniary profit or gain :**
Mo.: R. S., § 2771.
- c. **For carrying on an ordinary business :**
R. I.: G. L., Ch. 176, § 2.
- d. **Any species of trade or business :**
Nev.: G. S., § 802.
Wash.: G. S., § 1497.
- e. **Mining, manufacturing or other industrial pursuits :**
N. Mex.: Comp. L., § 411.
Okla.: Stat., § 930.
- f. **Any business designed to aid in the industrial or productive interests of the country :**
Wyo.: R. S., § 501.
- g. **Any manufacturing or mercantile business or union of the two :**
Mich.: Stat., § 4161 (a).
- h. **Any kind of manufacturing, agricultural, mining, mechanical or mercantile business :**
D. C.: Comp. Stat., Ch. 15, § 36.
- i. **Incorporation is authorized for certain specific enumerated purposes only :**
Ind.: Stat., § 5051.
Kan.: G. S., §§ 1156-1159.
Md.: G. L., Art. 23, §§ 14-38.
Mont.: Civ. Code, § 319.
Pa.: Corp., §§ 1, 2, 6.
Tenn.: Code, § 2024.
Tex.: R. S., Art. 642.
- j. **Any business useful to the public for which a firm or co-partnership may be lawfully formed in this State :**
W. Va.: Code, Ch. 54, § 2.
- k. **Any purpose for which individuals may lawfully associate :**
Cal.: Civ. Code, § 286.
Ida.: R. S., § 2577.
No. Dak.: Civ. Code, § 2856.
Utah: R. S., § 314.
Va.: Any business which may be lawfully conducted by an individual or by a body politic or corporate. Code, § 1145.
- l. **For carrying on any lawful business :**
Ala.: Civ. Code, § 1251.
Ariz.: R. S., § 232.
Ark.: Stat., § 1326.
Col.: Stat., § 472.
Conn.: Stat., § 1944.
Del.: L. 1899; Ch. 273, § 1.
Fla.: R. S., § 2122.
Ill.: Stat., Ch. 32, § 1.
Ia.: Code, § 1608.
Ky.: Stat., § 538.
La.: R. L., § 863.

1. For carrying on any lawful business—Continued.

Me.: R. S., Ch. 48, § 17.

Mass.: P. S., Ch. 106, § 14.

Minn.: Stat., § 2794.

Miss.: Code, § 832.

Neb.: Stat., § 1826.

N. H.: P. S., Ch. 147, § 1.

N. J.: L. 1896, Ch. 185, § 6.

N. Y.: G. L., Ch. 41, § 2; L. 1896, Ch. 460.

No. Car.: L. 1885, Ch. 19, § 1.

Ohio: Stat., § 3235.

Ore.: L., § 3217.

So. Dak.: Stat., § 3812.

Vt.: Stat., § 3704.

Wis.: Stat., § 1771.

m. For any purpose or purposes whatsoever :

So. Car.: L. 1897, No. 333, § 2.

